

VOL. I
TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1938

No. 514

NATIONAL LABOR RELATIONS BOARD, PETITIONER

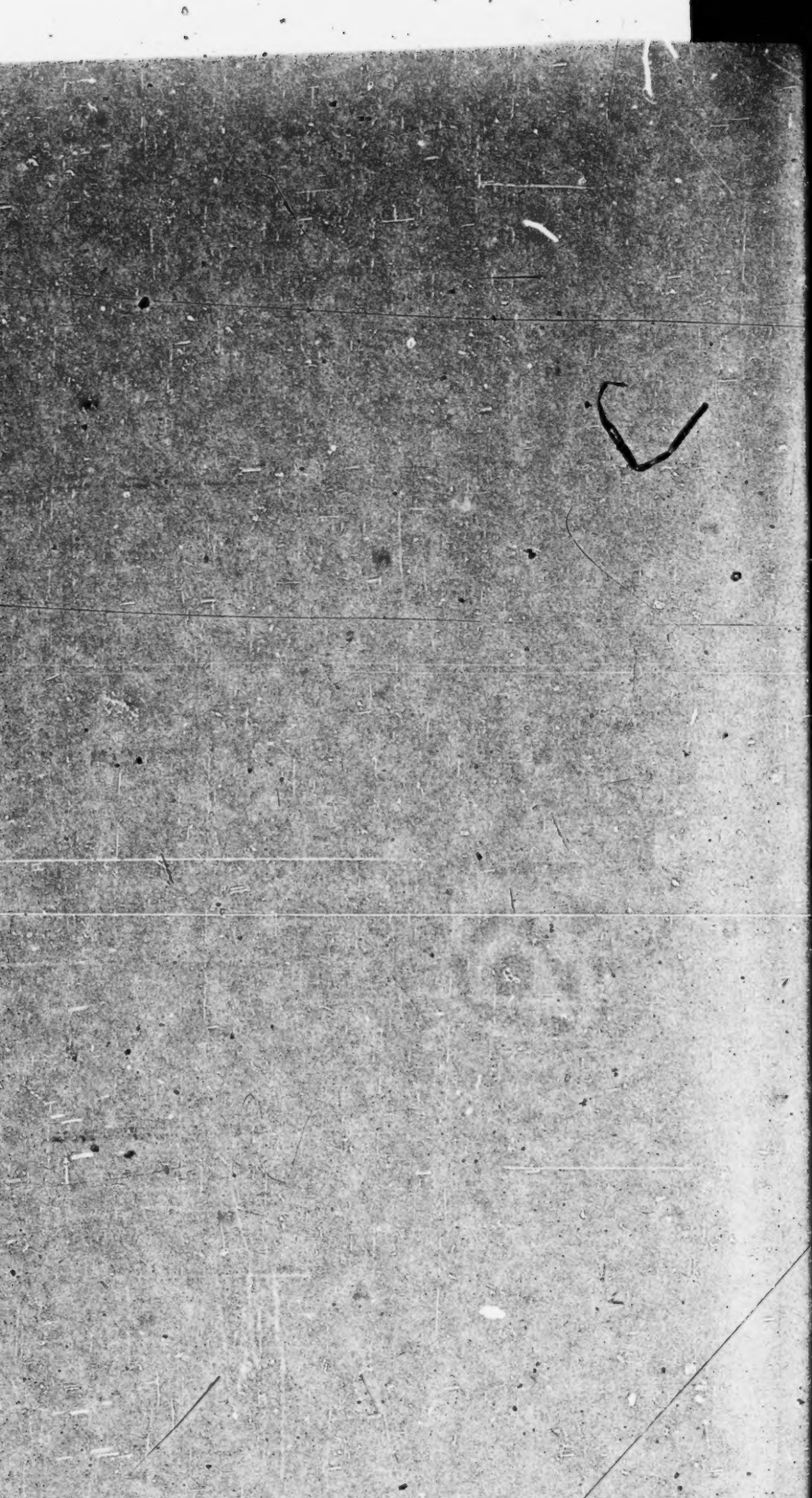
vs.

**BENJAMIN FAINBLATT AND MARJORIE FAINBLATT;
INDIVIDUALS, DOING BUSINESS UNDER THE FIRM
NAMES AND STYLES OF SOMERVILLE MANUFACTUR-
ING COMPANY AND SOMERSET MANUFACTURING
COMPANY**

**ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE THIRD CIRCUIT**

PETITION FOR CERTIORARI FILED DECEMBER 8, 1938

CERTIORARI GRANTED JANUARY 9, 1939



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vs.

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COMPANY AND SOMERSET MANUFACTURING
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WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE THIRD CIRCUIT

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RECORD

UNITED STATES OF AMERICA
Before the
NATIONAL LABOR RELATIONS BOARD
Second Region

Case No. II-C-19

In the Matter of
Somerville Manufacturing Co.,
Somerset Manufacturing Co.,
and Benjamin Feinblatt
and
Harry A. Posner, duly authorized
agent of Local No. 149 in the
International Ladies Garment
Workers' Union

CHARGE

Pursuant to Section 10 (b) of the National Labor Relations Act, the undersigned hereby charges that the Somerville Manufacturing Co., and the Somerset Manufacturing Co., and Benjamin Feinblatt, all doing business at Depot Square, Somerville, New Jer-

sey, have engaged and are engaging in unfair labor practices within the meaning of Section 8, subsections (1), (3) and (5) of said Act, and in the following manner:

(1). On or about September 12, 1935, the respondents discharged the following persons, Elizabeth Scheka, Lorraine Heitz, Ethel Rice, Angelina Mattei, Fay Katz and Mary Gecik, because of their activity in helping to organize the employees of respondents' shops for the purpose of collective bargaining and for the purpose of joining a recognized union.

(2). On or about September 18, 1935, the respondents or any of them refused to bargain with their employees for an increase in wages, for a reduction of hours of work and for a recognition of their organization formed for the purpose of collective bargaining, and in consequence of said refusal the employees went out on a strike.

(3). The respondents or any of them refused and still refuse to recognize Local 149, International Ladies' Garment Worker's Union as the authorized representative of the striking employees in their attempts to conciliate and adjust the differences involved in the strike.

The undersigned further charges that said respondents or any of them are engaged in interstate commerce and that said unfair labor practices affect commerce within the meaning of said Act.

(Signed) HARRY A. POSNER,

Manager.

Local No. 149 International
Ladies' Garment Workers'
Union.

Charge

Subscribed and sworn to before me this fourteenth
day of October, 1935.

EVELYN B. SMITH.
Notary Public
for New Jersey.

(SEAL)

Registered in Middlesex County.

Commission Expires 19th November, 1939.

UNITED STATES OF AMERICA
Before the National Labor Relations Board
Second Region

Case No. II-C-19

In the Matter of

Benjamin Fainblatt and Margorie Fainblatt, individuals, doing business under the firm names and styles of Somerville Manufacturing Company and Somerset Manufacturing Company

and

International Ladies Garment Workers Union
Local No. 149

COMPLAINT

It having been charged by the International Ladies Garment Workers Union local No. 149, 412 West Front Street, Plainfield, New Jersey that Benjamin Fainblatt, also known as Benjamin Feinblatt, and Margorie Fainblatt, also known as Margaret Fainblatt, individuals, doing business under the firm names and styles of Somerville Manufacturing Company and Somerset Manufacturing Company, hereinafter called the respondents, have been en-

gaged in and are now engaging in certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, approved July 5, 1935, the National Labor Relations Board by the Regional Director for the Second Region, as agent of the National Labor Relations Board designated by the National Labor Relations Board Rules and Regulations, Series 1 (General Rules and Regulations) Article IV, Section 1 hereby issues this complaint and alleges the following:

1. Respondents are and have been since August 7, 1934 doing business individually under the firm names and styles of Somerville Manufacturing Company and Somerset Manufacturing Company as appears in the records of the County Clerk, Somerset County, New Jersey, having their principal office and place of business at Depot Square, Borough of Somerville, County of Somerset, State of New Jersey, and are now and at all times hereinafter mentioned have been engaged at their plant at the aforesaid address (hereinafter called the Somerville plant), in the manufacture, sale and distribution of women's sportswear.

2. Respondents in the course and conduct of their business as aforesaid, cause and have continuously caused substantially all the raw material used in the manufacture of ladies sportswear as aforesaid to be purchased and transported in interstate commerce from and through states of the United States other than the State of New Jersey to their Somerville plant in the State of New Jersey, and cause and have continuously caused a substantial amount of the ladies sportswear manufactured by them to be sold and transported in interstate commerce to, into and

through states of the United States other than the State of New Jersey from their Somerville plant in the State of New Jersey, all of the aforesaid constituting a continuous flow of commerce among the several states. -

3. Respondents by their officers and agents, while engaged at the Somerville plant, as described above, did discharge Elizabeth Scheka on or about August 21, 1935, Angelina Matteis on or about August 22, 1935, Lorraine Heitz on or about August 28, 1935, Ethel Rice on or about August 28, 1935, Mary Geek on or about August 29, 1935, Fay Katz, on or about September 16, 1935 and Anna Santoro on or about September 16, 1935, hereinafter referred to collectively as the above named individuals, and each of them, employed by respondents at the Somerville plant, as above set out, and have at all times since the aforementioned dates of discharge refused and now do refuse to reinstate said above named individuals, and each of them.

4. Respondents discharged and refused to reinstate the above named individuals, and each of them, for the reason that the above named individuals, and each of them, joined and assisted a labor organization known as the International Ladies Garment Workers Union local No. 149, and engaged in concerted activities with other employees in said Somerville plant, for the purpose of collective bargaining and other mutual aid and protection.

5. By their discharge of said above named individuals, and each of them, and their refusal to reinstate said above named individuals, and each of them, as above set forth, and by all of said acts, and each of them, respondents did interfere with, re-

strain and coerce, and are interfering with, restraining and coercing their employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act, and did thereby engage in and are thereby engaging in an unfair labor practice within the meaning of Section 8, subdivision (1) of said Act.

6. By their discharge of said above named individuals, and each of them, and their refusal to reinstate said above named individuals, and each of them, as above set forth, and by all said acts, and each of them, respondents did discriminate and are discriminating in regard to the hire and tenure of employment of said above named individuals, and each of them, and did discourage and are discouraging membership in said International Ladies Garment Workers Union local No. 149, and did thereby engage in and are thereby engaging in an unfair labor practice within the meaning of Section 8, subdivision (3) of said Act.

7. The production employees of respondents not engaged in a supervisory capacity at their Somerville plant constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9 subdivision (b) of the said Act.

8. Approximately fifty-eight (58) of the said production employees are engaged in the details of manufacture and shipment as sewing, pressing, finishing, and packing ladies sportswear. Subsequent to August 15, 1935 and prior to September 13, 1935 a majority of the said employees in said unit had designated the International Ladies Garment Workers Union local No. 149 by Harry A. Posner, its

manager, as their representative for the purpose of collective bargaining with respondents, such designation having been made by accepting membership in and paying dues to Local No. 149 of the said Union. At all times since August 28, 1935 said International Ladies Garment Workers Union local No. 149 by Harry A. Posner, its manager, has been the representative for collective bargaining of a majority of the employees in said unit and has by virtue of Section 9 (a) of said Act, been the exclusive representative of all employees in such unit for the purposes of collective bargaining in respect to the rates of pay, wages, hours of employment, or other conditions of employment.

9. On or about September 13, 1935 while the respondents were engaged at the Somerville plant as described above, the International Ladies Garment Workers Union local No. 149 by Harry A. Posner, its manager, requested the respondents through their officers, agents and employees, to bargain collectively in respect to the rates of pay, wages, hours of employment and other conditions of employment, with the International Ladies Garment Workers Union local No. 149 as the exclusive representative of all the employees in said unit. On or about said date, and at all times thereafter, the respondents did refuse and have refused to bargain collectively with said International Ladies Garment Workers Union local No. 149 by Harry A. Posner, its manager, as the exclusive representative of all the employees in said unit, and have continued to refuse to bargain with said International Ladies Garment Workers Union local No. 149 by Harry A. Posner, as the representative of his employees for the purpose of collective bargaining.

10. By all the aforesaid acts, enumerated in paragraph nine (9) hereof, and each of them, respondents have engaged in and are now engaging in an unfair labor practice within the meaning of Section 8 subdivision (3) of said Act.

11. As a result of and because of the refusal of the respondents to bargain collectively with the said International Ladies Garment Workers' Union local No. 149 as representative of their employees, as enumerated and described in paragraphs seven to ten (7 to 10) inclusive, the said Union called a strike on September 18, 1935, at which time a majority of all the production employees of the respondents at said Somerville plant went out on strike. Since September 18, 1935, and at all times thereafter, the said Union by Harry A. Posner has been the representative of the majority of all production employees of the respondent and has by virtue of Section 9 (a) of said Act been the exclusive representative of all employees in said unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment and other conditions of employment.

12. The said respondents since the date of said strike, September 18, 1935, have continued to refuse to recognize and deal with the International Ladies Garment Workers Union local No. 149 by Harry A. Posner as the representative of their employees. All of the aforesaid in violation of Section 8, subdivision (5) of said Act.

13. The aforesaid unfair labor practices occur in commerce among the several states and on the basis of experience in the aforesaid plant and others in the same and other industries, burden and obstruct

such commerce and the free flow thereof, and have led and tend to lead to labor disputes, burdening and obstructing such commerce and the free flow thereof.

14. The aforesaid acts of the respondents enumerated in paragraphs one to thirteen (1 to 13) inclusive, as hereinabove set forth, constitute unfair labor practices affecting commerce within the meaning of Section 8 subdivisions (1), (3), and (5) and Section 2 subdivisions (6) and (7) of said Act.

Wherefore the National Labor Relations Board on the twenty-eighth day of January 1936, issues its complaint against Benjamin Fainblatt, also known as Benjamin Feinblatt, and Margorie Fainblatt, also known as Margaret Fainblatt, individuals, doing business under the firm names and styles of Somerville Manufacturing Company and Somerset Manufacturing Company, respondents herein.

NOTICE OF HEARING

Please Take Notice that on the 17th day of February, 1936, at ten o'clock in the forenoon, at the Court House, Borough of Somerville, County of Somerville, State of New Jersey, a hearing will be conducted before the National Labor Relations Board by a Trial Examiner to be designated by it in accordance with its Rules and Regulations, Series 1, Article IV, and Article II, Section 22, on the allegations set forth in the Complaint, attached hereto, at which time and place you will have the right to appear, in person or otherwise, and give testimony.

You are further notified that you have the right to file with the Regional Director for the Second Region, acting in this matter as the agent of the National Labor Relations Board, an answer to the complaint attached hereto within five (5) days from the date of service of said complaint.

Enclosed herewith for your information is a copy of Rules and Regulations, Series I, made and published by the National Labor Relations Board pursuant to authority granted by the National Labor Relations Act. Your attention is particularly directed to Article II of said Rules and Regulations.

In Witness Whereof the National Labor Relations Board has caused this, its Complaint, and Notice of Hearing, to be signed by the Regional Director for the Second Region on the twenty-eighth day of January, 1936.

ELINORE W. HERRICK.

*Regional Director for the
Second Region, 45 Broad-
way, New York, N. Y.*

ANSWER

Respondents, Benjamin Fainblott and Margorie Fainblott, individuals doing business under the firm names and styles of Somerville Manufacturing Company and Somerset Manufacturing Company of the Borough of Somerville, County of Somerset and State of New Jersey, by way of Answer to the Complaint filed in the above entitled cause, say that:

1. Respondents appear specially by their attorney, Leon Girofsky, for the sole purpose of denying that either the National Labor Relations Board or any board or official under the National Labor Relations Act, has or ever had any jurisdiction over the respondents or the business conducted by them under the name of Somerville Manufacturing Company and Somerset Manufacturing Company, in the premises or any alleged controversy between the respondents and their employees.

2. Respondents admit the allegations of paragraph 1 of the Complaint, except so much of said paragraph as states:

"in the sale and distribution of women's sportswear"

which is denied.

3. Respondents deny the truth of the allegations of paragraphs 2, 3, 4, 5, 6, 9, 10, 11, and 13.

4. As to the statements in paragraphs 7, 8, 12, and 14, respondents have no knowledge or informa-

tion thereof sufficient to form a belief, and therefore leave the Prosecutors to their proof.

FIRST DEFENSE TO COMPLAINT

1. Respondents' business, conducted under the names of Somerville Manufacturing Company and Somerset Manufacturing Company, is a manufacturing business conducted wholly within the State of New Jersey and is not in, or does it affect interstate commerce, and is not subject to federal regulation or control.

Second Defense

2. The complaint involves transactions between employer and employees which are purely local in character and not a matter of inter-state commerce and therefore can not be enforced as against the respondents.

Third Defense

3. The matters alleged in the Bill of Complaint are intra-state in character and not subject to regulation by Congress.

Fourth Defense

4. The relations between the respondents and the employees named in the bill of complaint, to wit: Elizabeth Scheka, Angelina Matteis, Lorraine Heitz, Ethel Rice, Mary Gecik, Fay Katz, and Anna Santoro, in manufacturing and production are not subject to Congressional regulation.

Fifth Defense

5. The National Labor Relations Act, under any construction consistent with the requirements of

the Constitution of the United States of America, can not have application to the Respondents or any transactions between the respondents and their employees.

Sixth Defense

6. The Respondents have not discriminated at any time in hiring, promoting, retaining or releasing employees by reason of membership in any organization.

Seventh Defense

7. Respondents have never required their employees, as a condition of employment or otherwise, to refrain from joining, organizing, or assisting a labor organization of their own choosing.

Eighth Defense

8. Elizabeth Scheka, Angelina Matteis, Lorraine Heitz, Ethel Rice, Mary Geeik, Fay Katz, and Anna Santoro, employees named in paragraph three of the Complaint, were not refused reinstatement to employment with the respondents and were not discharged for the reason that they joined and assisted in labor organization known as the International Ladies' Garment Workers Union, but on the contrary respondents allege that said employees were dismissed momentarily on the dates alleged in the Bill of Complaint until such time as respondents were in a position to furnish said employees with further work; that said employees have not, at any time, applied or returned to the respondents for employment.

Ninth Defense

9. The National Labor Relations Board, having

taken an active part in the institution of the proceedings, in that it has issued the complaint against the respondents, is disqualified from exercising a judicial function and from hearing the proceeding.

Tenth Defense

10. The Sections 8, 9, and 10 of the National Labor Relations Act constitute an arbitrary and unreasonable interference with the contractual relationships between Respondents and their employees, all of which cause the National Labor Relations Act to be illegal.

Eleventh Defense

11. Section 7 of the National Labor Relations Act is illegal. The National Labor Relations Act is contrary to the Constitution of the United States of America in that it deprives the respondents of freedom of contract and of property without due process of law.

Twelfth Defense

12. Respondents hereby repeat the statements contained in paragraph 1 of the Answer as though the same were made a part hereof and more particularly set forth, and further say that by appearing specially herein they do not voluntarily submit to the jurisdiction of the National Labor Relations Board or any Board or official under the National Labor Relations Act, and they do not waive any of their rights to contest the jurisdiction in the cause.

Thirteenth Defense

13. Respondents specifically deny the jurisdiction of the National Labor Relations Board, the validity of the National Labor Relations Act, and

*Order Designating Trial
Examiner*

the alleged federal jurisdiction over respondents and their business under the Act; and they reserve the right fully to maintain and present before any appropriate Court of Law or Equity all of their legal jurisdictional and Constitutional rights.

LEON GIROFSKY,

*Attorney for Benjamin
Fainblott and Margorie
Fainblott, individuals, do-
ing business under the
firm names and styles of
Somerville Manufaktur-
ing Co. and Somerset
Manufacturing Co.*

ORDER DESIGNATING TRIAL EXAMINER

A charge having been filed in this matter, and it having appeared to the Regional Director of the 2d Region that a proceeding in respect thereto should be instituted, and the Board having considered the matter and being advised in the premises,

It Is Hereby Ordered, that Robert M. Gates act as Trial Examiner in the above case and perform all the duties and exercise all the powers granted to trial examiners under the Rules and Regulations—Series 1 of the National Labor Relations Board.

By direction of the Board:

BENEDICT WOLF,
Secretary.

**PROCEEDINGS BEFORE THE NATIONAL
LABOR RELATIONS BOARD**

County Court House,
Somerville, New Jersey,
February 17, 1936.

The Above entitled matter came on for hearing,
pursuant to notice, at ten o'clock, a. m.

Before:

Robert M. Gates, Esq., Trial Examiner.

Appearances:

David A. Moscovitz, Esq., Attorney for National
Labor Relations Board.

Leon Girofsky, Esq., Central Building, Somer-
ville, N. J., Attorney for Respondents.

T. Girard Wharton, Esq., Joseph Halpern, Esq.,
Somerville, New Jersey, Associate Counsel.

Alexander Feller, Esq., Schenek Building, 41-
43 Paterson Street, New Brunswick, N. J., At-
torney for Union.

PROCEEDINGS.

MR. MOSCOVITZ:

I would like at this time to introduce into the
record certified copies of the pleadings in this case
under the signature of Mrs. Herrick, as Board's Ex-
hibit Number One.

MR. GIROFSKY:

If Your Honor please, keeping in mind the fact that we have entered a special appearance here, however for the purposes of the present motion, I wish to say that I object to the admissibility of this certification of the record and pleadings because it contains matters therein that have not been furnished to the respondents, namely, the charge made against the respondents; a demand or request was made for a copy of the charges and a refusal was had; and in addition to that, this record or certification contains an order designating your Honor as the Trial Examiner and this is the first intimation or knowledge that I have had that Your Honor was to proceed. The respondents have not had any opportunity to know who was to preside at this trial. For those reasons, I object to the entry of this record.

TRIAL EXAMINER GATES:

The objections are overruled and the matter is admitted.

MR. GIROFSKY:

May I have an exception on the record? Now, if your Honor please, I wish to file at this time a motion, the original and three copies, in accordance with the rules, asking Your Honor to dismiss this complaint on the grounds cited in the motion.

TRIAL EXAMINER GATES:

This motion being based upon an attack on the constitutionality of the Act?

MR. GIROFSKY:

That, and also the local nature of the business. The employees, as alleged in the complaint itself, are engaged in purely a local practice, that of manufacturing, it being admitted by the complaint itself.

TRIAL EXAMINER GATES:

The motion is denied.

(Further discussion ordered off the record).

You understand, of course, Mr. Girofsky, that as an agent of the Board, I must assume the constitutionality of the Act. The Board so assumes and I do, and I will not in this proceeding be able to rule that the Act is unconstitutional. This may go in with the proceedings, and of course your rights are preserved.

MR. GIROFSKY:

May I have this entered as part of the record?

TRIAL EXAMINER GATES:

Yes.

MR. GIROFSKY:

Will you note an exception to the ruling?

TRIAL EXAMINER GATES:

Certainly.

(Document referred to received in evidence, marked Board's exhibit number one).

(Document referred to received in evidence, marked Respondent's exhibit number one.)

BENJAMIN FAINBLATT, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination

BY MR. MOSCOVITZ:

Q. What is your full name?

A. Benjamin Fainblatt.

MR. GIROFSKY:

I wish to object to the move of the National Labor Relations Board at this time in calling Mr. Fainblatt, the respondent, to testify in this proceeding on behalf of the complaining parties, the Board itself, or Mr. Posner, of the Union. This proceeding is in the nature of a quasi criminal proceeding and the Board is at this time seeking to have this witness testify against himself, which is not permitted under his right in the constitution and the statute in such cases.

MR. MOSCOVITZ:

Mr. Examiner, of course the complete answer to that is that this is not a criminal proceeding in the first place.

MR. WHARTON:

What is your authority?

MR. MOSCOVITZ:

The statute itself is authority for that proceeding.

TRIAL EXAMINER GATES:

Objection overruled.

MR. GIROFSKY:

Exception.

BY MR. MOSCOVITZ:

Q. What is your address?

A. Cliff Street, Somerville, New Jersey.

Q. What is the exact name of the company with which you are associated?

A. Somerville Manufacturing Company, also Somerset Manufacturing Company.

Q. Are these separate companies?

A. No.

Q. You use the names interchangeably?

A. Yes.

Q. So that when you say Somerville Manufacturing Company, it is really at the same time the Somerset Manufacturing Company?

A. Yes.

Q. When did your companies come into existence here?

MR. GIROFSKY:

I object. I don't see where that is material or relevant to the issue.

TRIAL EXAMINER GATES:

Objection overruled.

MR. GIROFSKY:

Exception.

A. The Somerville Manufacturing Company was named in 1934. I am not positive how the Somerset Manufacturing Company, if it was named in the same year, but it has been named for a certain reason.

Q. Is it an entirely new company?

A. No.

Q. The companies had been in existence elsewhere before?

A. No.

Q. Then it is a new company?

A. Oh, if you call it a new company, call it a new company, yes. It was never in existence before.

Q. That is what I mean. What is its business address?

A. We are manufacturers, manufacturing merchandise for a jobber.

Q. Yes, but what is the business address of your company?

A. If you will explain me more accurate, I will be able to answer it. I don't understand your question.

Q. Where is your company located?

A. Here in Somerville, New Jersey, Depot Square Building—they call it also—the building it has two names.

Q. In what capacity are you associated with these two companies?

A. I am the owner.

Q. Complete owner?

A. Complete owner.

Q. Are you in charge of operations?

A. I am in charge of my own factory, but on the other hand I have four people who take care of my production.

Q. Supervisors?

A. Foreman, forelady and so forth.

Q. You are also in charge of the company's labor policy?

A. If you will explain me what you mean by labor policies, I will be able to answer it.

MR. GIROFSKY:

Do you withdraw that question?

MR. MOSCOVITZ:

I will break it down for him.

MR. GIROFSKY:

I object to the question. It is too broad. It is incomplete. Policy calls for a conclusion.

MR. MOSCOVITZ:

All right. I withdraw the question.

BY MR. MOSCOVITZ:

Q. Do you hire and fire employees?

A. As a rule, I do.

Q. Yes. Can anyone in your plant hire or fire without your authorization or approval?

A. No.

Q. All right. Now you say you are the sole owner of this company?

A. Yes.

Q. Or of these companies? Who is Marjorie Fainblatt?

A. My daughter.

Q. Does she have any ownership interest?

A. No.

Q. She is employed by you?

A. Well, she is and she is not.

Q. In what way is she not?

A. Just merely she is helping me as a daughter a father.

Q. Then is not—

A. Not as an employee.

Q. But she does not work for anyone else there?

A. Not in any capacity.

Q. She is just helping you?

A. Yes.

Q. What did you manufacture in your plant?

A. In summer I manufacture summer goods. We call that beach wear. In winter we manufacture what we call snow wear. Snow wear consists of snow suits, snow pants, which is made of a heavier material.

Q. And what do your summer goods consist of?

A. Of clear cotton goods.

Q. Slacks?

A. Yes, three-piece goods, shorts, skirts, a blouse, we call it a three-piece suit.

Q. And what materials do you use in these operations or your production?

A. As I said before, cotton goods.

Q. Exclusively cotton?

A. Yes.

Q. That is in the summer?

A. In the summer.

Q. And how about your winter products?

A. All wool-goods cloth.

Q. And those are the only materials you use?

A. Yes.

Q. Now where do you get your raw materials from?

A. They are sent to me from the jobber.

Q. And where is your jobber located?

A. Shall I answer that?

MR. WHARTON:

It is all right.

A. 520 Eighth Avenue, New York.

Q. What is his name?

A. Lee Sportswear.

Q. Do you get all your material from the Lee Sportswear?

A. Yes.

Q. Both the woolen and the cotton?

A. Yes.

Q. And do they ship it to you directly?

A. Some comes direct from their place, some they order from the mills to be delivered straight to my place.

Q. And can you give me the geographical location or locations of these mills?

MR. GIROFSKY:

I object. I don't see where this has any bearing on the dispute between this employer and the Board. If there is a dispute, I don't see where it has any bearing between this employer and the Union or the girls.

TRIAL EXAMINER GATES:

I think it does have a bearing, Mr. Girofsky, on the jurisdiction question.

MR. GIROFSKY:

If he knows, all right. I take an exception.

MR. MOSCOVITZ:

Mr. Examiner, there is one point that should be cleared up. It seems to me before we proceed any further something must be made plain and that is the constant reference to the dispute between Mr. Fainblatt and the Union. There is no dispute here between Mr. Fainblatt and the Union. The complaint here issues in the name of the National Labor Relations Board, which is a Federal agency, and this is an inquiry by the Board into this particular matter to determine whether there has been an infraction.

MR. GIROFSKY:

It is an investigation?

MR. MOSCOVITZ:

It is a hearing in the nature of an inquiry.

(Question read to the witness).

A. I cannot.

BY MR. MOSCOVITZ:

Q. Do they come from outside of the State of New Jersey?

A. Well—

MR. GIROFSKY:

I object. I withdraw the objection.

A. Some do.

Q. What percentage of your purchases come from the Lee Sportswear Company, the majority?

(Question read to the witness).

MR. GIROFSKY:

I object. This question, Your Honor, is grossly unfair. There is no testimony here that he purchased materials. Counsel has asked the

questions predicated on receipt of materials and answers have been given on that predication. There is no testimony on this fact. It is grossly unfair on the part of the government.

MR. MOSCOVITZ:

I was laboring under the assumption that when I said "where do you get your materials from?", when I originally asked the question, I assumed that he was the purchaser. Now, if there is some other arrangement, I stand corrected.

MR. GIROFSKY:

There is no testimony in this case, nor have there been any questions preceding this last question, concerning purchase of materials.

MR. MOSCOVITZ:

If I am wrong in the assumption that you buy your goods, then we will let the record stand upon this point that you get the goods from Lee Sportswear Company and other places.

TRIAL EXAMINER GATES:

Do you wish to re-phrase the question?

MR. MOSCOVITZ:

Yes. I will continue with that question so that the record will be clear. I don't want to take any advantage of Mr. Girofsky.

BY MR. MOSCOVITZ:

Q. Is this clear that you get material from Lee Sportswear Company?

A. Yes.

Q. Now, you say you get other materials from other places outside the state of New Jersey?

A. Mr. Lee Sportswear's order.

Q. Now what is your arrangement with Lee Sportswear Company?

A. My arrangement is to manufacture such goods into ready-made garments.

Q. For them?

A. Exclusively.

Q. You are the manufacturer?

A. Yes.

Q. They are the jobber?

A. Yes.

Q. They are your exclusive outlet?

A. My exclusive outlet.

MR. GIROFSKY:

I object to that.

MR. MOSCOVITZ:

He has answered the question.

MR. GIROFSKY:

I object to that. I wish counsel would explain the outlet phase of his question. I feel he is taking unfair advantage of his own witness.

MR. MOSCOVITZ:

Mr. Examiner, the witness seemed to understand the question. He answered it.

MR. GIROFSKY:

This is an informal proceeding and I don't think you should take unfair advantage of this man.

MR. MOSCOVITZ:

I don't know that I am taking unfair advantage, but I would be very glad if you would inform me how you would like me to ask the question.

MR. GIROFSKY:

You are retained in the case.

MR. MOSCOVITZ:

All right, then I will try.

BY MR. MOSCOVITZ:

Q. Do you know what an outlet is?

A. No.

Q. You don't? Then why did you answer my question?

A. Maybe I was wrong, maybe.

Q. Maybe you were wrong. Do you sell—

A. Is that what you call outlet?

Q. Yes.

A. I didn't understand the question.

Q. Do you sell only to the Lee Sportswear?

A. I don't sell to nobody.

Q. Are they your only jobber?

A. Yes.

Q. They are the exclusive jobber?

A. That's right.

Q. And all your produced materials go to Lee Sportswear, is that right?

A. Yes.

Q. Don't be afraid to answer.

A. I am not afraid. I have not stolen anything. What should I be afraid of?

MR. GIROFSKY:

Will Mr. Moscovitz explain the meaning of "jobber" as he sees it?

MR. MOSCOVITZ:

Do you want me to explain?

MR. GIROFSKY:

You can send me a copy too, but I ask you to explain.

MR. MOSCOVITZ:

I will explain if the Trial Examiner insists.

TRIAL EXAMINER GATES:

It seems to me it ought to be very simple to get at the nature of the business conducted by

Mr. Fainblatt. Perhaps Mr. Fainblatt would be more competent to explain the relationship.

A. All right. This is what they call a jobber; there is a certain way they call jobbers and manufacturers. A jobber is the one who has got material and must have them made up. He is not running his own factory but he is contracting his material to be manufactured under contract by somebody else. We are getting that material cut and we bring them around, or we call it, we make them up into ready made garments and we are getting so much per garment for the making of that garment. The dozens or by six or whatever the nature of the product of the garment is.

TRIAL EXAMINER GATES:

It comes to you cut?

THE WITNESS:

Some comes cut, some we cut ourselves, some they send raw materials to us and some they cut on their own premises.

BY MR. MOSCOVITZ:

Q. Do they pay you for this service?

A. They pay me for making up those garments.

Q. Will you tell me what your volume monthly purchases are of raw materials?

A. I am not purchasing any material whatsoever.

Q. Can you tell me what the volume monthly incoming materials is?

A. I cannot tell you, I am not buying the material, and I don't know the value of it.

Q. Can you tell me how many yards of material you get monthly?

A. I am sorry, I never took no inventory to say how much material we use in garments.

Q. Can you give me an approximation?

A. Impossible.

Q. How long have you been in the business, Mr. Fainblatt?

A. Since 1934, August 15th or 17th, when we opened up that place.

Q. And you have been making this sort of product for a long time.

A. I have been making that sort of product right here in Somerville.

Q. And you are in charge of operations?

A. I am in charge of my business.

Q. And you cannot tell me the approximate yardage that you get over any period of time?

A. No, I am sorry I cannot. It is impossible. They keep no account of the material.

Q. Your records would not show?

A. No.

Q. Can you tell me the approximate dozens of any finished products that you ship monthly?

MR. GIROFSKY:

I object to that. There is no testimony in this case that this man does ship.

BY MR. MOSCOVITZ:

Q. Do you ship, Mr. Fainblatt?

A. I send it back to the parties who I am getting it from.

Q. Someone carries it away?

A. Well, I cannot carry it.

Q. That's right. It goes by truck or railroad or something else?

A. Yes, the truckman brings it and takes it back.

Q. Can you now answer my previous question as to the approximate dozens of finished products that are taken from your plant to the jobber?

A. It is impossible for me to tell you, Mr. Moscovitz, or counsellor, rather, pardon me.

Q. You don't know how much you ship?

A. No, unless I go through my records.

Q. Have you got your records with you?

A. We have got books here.

MR. GIROFSKY:

We only have at the moment the Somerville Manufacturing Company records, the records requested by you, not the Somerset.

MR. MOSCOVITZ:

I thought they were the same company.

MR. GIROFSKY:

They are different, these were not subpoenaed.

MR. MOSCOVITZ:

I understand from Mr. Fainblatt's testimony that they are one company, and that the names are used interchangeably, that when he said one thing he spoke for the other also.

MR. GIROFSKY:

Well—

BY MR. MOSCOVITZ:

Q. Do you keep separate records?

A. Yes.

Q. Will you bring in the records of the Somerset Manufacturing Company?

MR. GIROFSKY:

I object. I feel that this witness should be subpoenaed.

TRIAL EXAMINER GATES:

I think the witness may answer.

MR. MOSCOVITZ:

Now, of course, if counsel for the respondents

is interested in delaying this proceeding and is interested in hiding all the facts—

MR. GIROFSKY:

I object to that remark. If Mr. Moscovitz thinks I am trying to impede the progress of this case, he has the right to take action under the Act.

TRIAL EXAMINER GATES:

Answer the question.

BY MR. MOSCOVITZ:

Q. Will you bring in the records of the Somerset Manufacturing Company in accordance with my request?

MR. GIROFSKY:

I think that question is grossly unfair. Mr. Moscovitz knows that he is calling for a matter from this witness that will perhaps lay the foundation for Mr. Moscovitz to take steps for contempt proceedings in this Act, if he answers it.

TRIAL EXAMINER GATES:

I don't so interpret it.

MR. GIROFSKY:

I take an exception.

TRIAL EXAMINER GATES:

You may answer.

A. What is the question again, please?

BY MR. MOSCOVITZ:

Q.—Whether or not you will bring in records of the Somerset Manufacturing Company?

A. I will be frank with you. I have books here but I don't know if it is Somerset or Somerville Manufacturing Company.

Q. Will you look and see?

MR. GIROFSKY:

Here are the Somerville books. We don't have the Somerset books.

BY MR. MOSCOVITZ:

Q. Do you have the Somerset Manufacturing Company books?

A. I will see.

Q. You don't have the Somerset books here?

A. No.

Q. Will you bring the Somerset books in this afternoon?

A. I suppose if I will be subpoenaed.

Q. I will ask you if you will co-operate to the extent of bringing them in. We can subpoena you if you prefer to be subpoenaed, but I would rather you would co-operate.

A. I will have to confer with my counsel.

MR. GIROFSKY:

I will produce them.

BY MR. MOSCOVITZ:

Q. So I will reserve any questions as to percentages of outgoing and incoming goods until this afternoon, Mr. Fainblatt. How are the raw materials shipped to you?

A. By the expressman.

Q. You get them by rail?

A. No.

Q. You don't use rail at all?

A. No.

Q. By truck?

A. Yes. We call them expressmen in our line. In the tailoring line, they call them expressmen.

Q. And who are these expressmen?

A. Different expressmen sometimes.

Q. Yes. Well, who? Well, I assume if you know you will tell me.

A. They are, as I say, sending in goods from the mills, I don't know the people. We sign for the goods.

Q. You don't know what mills?

A. No.

Q. You don't know what trucks?

A. No. It don't interest me at all. All that interests me is to get the goods and make it up and get the money for it.

Q. Your records wouldn't show?

A. No.

Q. As far as you know your goods come from any place?

A. Yes.

Q. And all you know is where you ship the goods?

A. Yes.

Q. And all you know is where you ship the goods?

A. Yes.

Q. All you know is the goods come from outside the state?

A. Yes, that's right, from New York.

Q. And they come by truck?

A. Yes.

Q. And you don't know the name?

A. No, I don't know the names.

Q. Are there constant incoming shipments?

A. One truckman is a constant one.

Q. One is constant, yes. You get shipments every day?

A. Not as a rule, sometimes we do, and some days we don't.

Q. Your shipments are seasonal?

A. It all depends.

Q. Depending on seasons?

A. It all depends.

Q. Now, that being the case, the arrangement between you and Lee Sportswear Company being such as it is, you don't execute any contract for shipping goods; do you?

A. No, no.

Q. You just have one standing arrangement?

A. Just one standing arrangement.

Q. Does your arrangement provide for certain required shipments?

A. No.

Q. Well, are you not notified by the Lee Sportswear Company when to make shipments to the company?

A. No, no. If we have the goods ready we ship it.

Q. Yes. But they send you raw materials, don't they?

A. Yes.

Q. And then they tell you what goods to make up, don't they?

A. Yes.

Q. Do they also tell you how many dozens of different things to make up?

A. Well, we call it the cutting ticket, or the stamp ticket. The stamp will show if the shipper cuts the stuff. It will show they have shipped me two hundred dozen, five hundred dozen which is cut, and consequently we have to send five hundred dozen worked.

Q. Do they send you a statement?

A. Yes.

Q. Does it tell you what to do with the goods?

A. Yes.

Q. Does it tell you also to whom the goods are to be shipped?

A. We ship them back again to Lee Sportswear.

Q. And all the material that you get is manufactured by you and then it is shipped exclusively back to Lee Sportswear?

A. Well—

Q. Can you state briefly, Mr. Fainblatt, the process that you go through in making the products sold or shipped from the time the raw materials arrive?

A. What do you mean by "process"? Do you want me to outline how the garment is made here?

Q. Take a summer slack. Now, you get raw material for the production of that?

A. Makes no difference—it is not a made up garment.

Q. Does it come to you cut?

A. I explained before some come cut, some we cut ourselves.

Q. Now, you explain to me in some detail how the material comes to you; what you do with it when you get it; and as simply as you can how the thing is processed and shipped out, just for my information.

A. As long as there is no objection from my counsel, well, when the garment comes in they are divided for different operations, what we call. A garment is made probably by fifty, twenty different operators, what we call. One will make a leg, ore will make a belt, the third will sew on a button, the fourth will do something else and the fifth press and so on. One garment may go through fifteen hands possibly for different operations in that garment.

When that garment is ready, we pack it and we ship it back.

Q. You have your own packing department?

A. Well, we have to have a man to pack it up. I can't do it all.

Q. Done in your plant?

A. Yes, sure.

Q. And do you have what would be commonly known as the shipping department, or does the packer attend to that?

A. Yes.

MR. GIROFSKY:

Let him answer the questions.

BY MR. MOSCOVITZ:

Q. Who handles the goods after packing?

A. The truckman comes and packs it on his truck.

Q. Does the truckman do his own packing?

A. No, handles it and puts it on the truck.

Q. Are any of your own employees engaged in handling the packed goods into the truck?

A. No, got nothing to do with us.

Q. Never touch it?

A. No.

Q. The truckman comes to your place?

A. Yes.

Q. Backs up to your door?

A. Exactly.

Q. The goods are there packed?

A. That's it.

Q. Now, who takes the goods and puts them into the trucks?

A. The truckman.

Q. No one helps him?

A. No.

Q. Does anyone in your plant tell him what goods to take?

A. Well, he has to be told certainly. He sees the goods right there packed.

Q. He just tells him which goods to take?

A. Well, certainly.

Q. Does he help him put it into the truck at all?

A. No.

Q. All right. What trucking concern is used in carrying the goods away from your plant?

A. Well, the main truckman we have is Sissler Brothers in Somerville, New Jersey.

Q. Is he the truckman used in carrying it into your plant too?

A. Bringing it and taking it back.

Q. Do you keep raw materials on hand, stored?

A. Yes, we have raw material there belonging to Lee Sportswear.

Q. Do you keep very much?

A. Sometimes more, sometimes less.

Q. A large volume?

A. Again I cannot answer you, I don't know, I don't take no stock.

Q. Well, Mr. Fainblatt, do you mean to tell me you don't know how much stock you have on hand?

A. No.

Q. You don't know how much raw materials you keep stored?

A. I can see it on the shelves?

Q. You don't know how many pieces you have?

A. No, I don't count them.

Q. You don't know how many dozens you manufacture?

A. I don't know—I do know when I charge the

goods, I know so many dozens were made up and were shipped.

Q. All you know is whether there is a lot or a little?

A. That is it. I can see it in front of my eyes.

Q. What part of the year do you have a lot?

A. That is a hard thing to tell. It all depends on how business is. I suppose so. If they have got more business, they send me more work. If they got less business, then they send me less work. This business is very peculiar. It is on and off. I can employ today a hundred people and tomorrow I will have no work for thirty people.

Q. And materials are stored in your plant?

A. The materials are sent to me to be cut and made up and we can accomplish it. We are cutting it as we can. It is not a question of storing it. It is a question that we have to make it up. We cannot make them up all in one time. It depends.

Q. In other words, you don't like to keep materials there long?

A. No, not as a rule. I am cutting them up as quick as I can.

Q. As soon as the material comes in you try to cut it up?

A. Yes.

Q. You don't keep it, you do it right away?

A. Yes, as we can accomplish it.

Q. But is it a process which has to be worked rapidly?

A. It is a process that they have to be made up as we can, as we can accomplish making them up. We may get into five thousand garments, it may probably take us three weeks to make them up. I can't make them up in a day.

Q. As the material comes in you make it up and it goes right out?

A. They are not kept in my possession.

Q. Is your work seasonal?

A. My work is certainly seasonal, sure.

Q. Which are your busy seasons?

A. March starts up our season.

Q. March?

A. Our season.

Q. For the summer?

A. Yes.

Q. When does your winter season start?

A. It starts sometimes earlier, sometimes later. All depends upon the demand, what styles are coming out. We shall judge around August or September, our season starts up.

Q. And how long do your seasons last in manufacturing?

A. Again there is a question. Certain class of merchandise drags along and certain class will be cut off like with an axe. It is not a thing, as I say, from today until tomorrow. It is my season. It is impossible in our line to say that.

Q. Depends entirely upon the state of the market?

A. Exactly, yes.

Q. Well, what are your operations concerned with during slack periods?

A. I don't understand what you mean.

Q. Off seasons—do you have any operations at all off seasons?

A. We always work.

Q. So, despite the fact that one season may start in March and another in August or September, there is constant operation?

A. Yes, well—to a certain degree, I want you to know.

Q. More or less?

A. I mean when we are busy, we may employ one hundred people but when we are slow, we may only employ twenty people, but we never shut down our factory.

Q. According to the answer you gave me before, am I right in assuming that you don't carry finished stock over on hand? It goes right out?

A. No.

Q. You cannot tell me what your monthly shipping volume is until you see your books?

A. Some months are more and some are less. I have to take an inventory from the books.

Q. You have the books of the Somerville Manufacturing Company here?

A. Yes.

Q. Can you tell me the monthly incoming raw material?

A. No.

Q. Shipments?

A. I can give you only the shipping but not the incoming.

Q. You don't know?

A. No.

Q. Your books wouldn't show?

MR. GIROFSKY:

Why not look at the books?

BY MR. MOSCOVITZ:

Q. This is only for outgoing?

A. Yes, we charge him on the books for whatever it is.

Q. The only records of incoming would be with Lee Sportswear?

A. No, I don't know.

Q. You don't count?

A. We give him what is a statement.

Q. You don't have the statements?

A. I don't need to carry them. I charge it to the garment and I don't need it any more. He will send me a statement for five hundred garments to be made in such a style. Once we are through with them, we are making out the bill and showing that I send you in five hundred garments at one dollar and fifty cents or two dollars for the manufacturing of the garments, bills amount to so much money.

Q. You show me from the books if you can, Mr. Fainblatt, your outgoing? This is in the name of the Somerville Manufacturing Company?

A. Yes.

Q. Would Somerset also show outgoing?

A. Yes.

Q. Why do you keep two different sets of books?

A. Inasmuch as the N. R. A. was in existence and we had been working under two different Codes, one code was thirteen dollars a minimum for forty hours; one code was twenty one dollars a minimum for thirty-five hours, and not to have any confliction between thirteen dollar minimum and twenty-one dollar minimum, there, where we came—as I explained before—not to have that confliction, I made one of them Somerville and the other one Somerset. The Somerset I have been running under the thirteen dollar minimum—forty hours; the Somerville which I manufacture a certain class of material which came under the code of twenty-one dollars, I have manufactured twenty-one dollar minimum and we have kept up the process of it to be able to give a clear knowledge to the code authorities that

we are not inflicting or infringing upon the laws or rules or whatever it was at that time.

Q. I just want to get an idea, Mr. Fainblatt, about how large an operation you are engaged in. I am not interested in anything more than that.

A. You asked me this question.

Q. I appreciate your answer.

A. Now, if you can show me what you want.

Q. Now, will you show me from your books the volume dozens of finished products that are shipped from your plant to New York over a period of time? I would appreciate that very much.

A. I will show you right here, referring to the Somerville Manufacturing.

Q. All right. We will keep the Somerset for this afternoon.

A. On October 4, we shipped Style 103, two-twelfths of a dozen skirts.

Q. When was this?

A. 1934. Three dollars a dozen—eight dollars.

Q. On October 5th, 1935? "

A. Lot 103, seven skirts. Style 728; Lot 103, fifteen dozen and four-twelfths corduroy skirts, three dollars a dozen—forty-six dollars.

Q. All right. Now October 5th—

A. Lot 111—

Q. Is this your busy season?

A. This was the Somerville Manufacturing Company's Shipments.

Q. October is supposed to be your busy season?

A. I explained it before that there is not such a thing.

Q. Do you remember whether this was or was not a busy season?

A. I will have to think first.

Q. There is nothing tricky about the question. If you don't know, say you don't.

A. I don't know, exactly. Now, for instance, here is one hundred and fifty two dozen, three dollars; five dozen four hundred and twenty-six dollars and fifty cents. October 9th, we shipped thirty-eight dozen and three-twelfths and Style 109, ten skirts, three dollars. It goes right on.

Q. Take November.

A. November 22nd—

Q. Of course, before you go to November, in October there were further shipments in addition to the ones you read here? We will skip the rest of October, but during the month of October in addition to the dates you have already given, there were other shipments?

A. Certainly you can see in here.

Q. Then go to November, 1934.

A. Yes. In November we shipped lot 127, yes.

Q. That was October.

A. Yes, my error, excuse me. Style 128, one hundred and fifty-eight—this is the sizes, total one hundred and fifty-eight.

Q. That is dozens?

A. Singles—thirty-nine dollars and fifty cents.

Q. Yes.

A. November 7th. Eighteen and a half dozen, one dollar and fifty cents a dozen. Do you want the amount I received?

Q. Just the dozens. Go on.

A. November 9th we shipped six dozens. This shows it as correct.

Q. You are very cooperative.

A. On November 14th, thirty-eight and four-twelfths—

Q. This is all 1934?

A. Yes, twenty-four hundred and nineteen dozens. A dozen and a half I shipped. On November 19 I shipped twenty-one dozen and one-twelfth. On November 22nd I shipped a hundred and fourteen dozen.

Q. Your book here starts in October, does it not?

A. Yes.

Q. Is that when your business started in October, 1934? —

A. I suppose so.

Q. What is November, just give me one more month. I understand here too, there are further shipments during the month of November, but we won't go into that.

TRIAL EXAMINER GATES:

Have you anything there for 1935?

THE WITNESS:

Yes. The Judge is asking me about 1935, January, 1935. In January, we shipped forty dozens and seven-twelfths. On January 8th, we shipped that, and we shipped one hundred twenty-one and seven-twelfth dozen on January 9th. We shipped one hundred and fifty skirts.

BY MR. MOSCOVITZ:

Q. That was in 1935?

A. January 11th, 1935 we shipped eighteen and six-twelfths dozen.

Q. What month, Mr. Fainblatt, do you have in this book, in addition to January?

A. I finished this line of work under the twenty-one dollar minimum. I finished skirt making. This was the last we shipped. On February 15th we shipped seventy-six dozen and this is the finish and nothing more.

Q. Do you have your records after February, 1935, of the Somerville Manufacturing Company?

A. I have no more records. That is discontinued.

Q. Do you have records of your other line?

A. Yes, of the Somerset Manufacturing Company.

Q. But that would be under Somerset. So from this point on anything you manufactured comes in under your other books, and you will bring those in this afternoon?

A. Yes.

Examination by Trial Examiner

BY TRIAL EXAMINER GATES:

Q. I take it these Sportswear people were not your exclusive jobber on the twenty-one dollar line?

A. Yes.

Q. Now?

A. Yes.

Q. But before too?

A. All the time. I have no other jobber that I am working for.

BY MR. MOSCOVITZ:

Q. Do you know who owns the Lee Sportswear Company, Mr. Fainblatt?

A. Must I answer that question? Leo Fainblatt.

Q. Leo. And who is Leo Fainblatt?

A. My son.

Q. Is he the complete owner?

A. No.

Q. Who else has an interest in it?

A. Irving Fainblatt.

Q. And who is he?

A. My son.

Q. And who else?

A. And Marjorie Fainblatt, my daughter.

Q. The one that helps you here?

A. Exactly.

Q. She is an owner in interest of Lee Sports wear?

A. Yes.

Q. And who else?

A. That is all.

Q. And you are not financially interested in that company?

A. No, sir.

Q. Is that a corporation?

A. No, sir.

Q. That, too, is just a business operating under a trade name?

A. A partnership.

Q. I see. You have no financial interest in it?

A. No, sir.

Q. Were you ever associated with that company?

A. No, sir.

Q. Never worked there?

A. Yes, as a worker, yes, but not as an owner.

Q. You worked for your son?

A. Oh, yes, sure.

Q. And when was this, Mr. Fainblatt?

A. Prior to 1934. I mean prior to opening this business.

Q. What sort of work did you do there?

A. Oh, the same line, supervising.

Q. What was your title?

A. My title was everything—I don't know what to say—I didn't receive no title, not even a duke.

Q. Did you have any money invested in it?

A. No.

Q. At that time?

A. Not a penny.

Q. Just worked on a salary?

A. Exactly.

Q. According to your testimony, they are jobbers?

A. Yes.

Q. Who organized that business?

A. It is not an organization.

MR. GIROFSKY:

What business are you referring to?

MR. MOSCOVITZ:

Lee Sportswear.

A. I didn't organize it. It is not my business to know their organization.

MR. GIROFSKY:

I don't think this witness is qualified to testify on that.

BY MR. MOSCOVITZ:

Q. Marjorie Fainblatt is registered here in Somerville under a trade name also?

A. She has registered under the name of Somerset Manufacturing Company.

Q. She is registered here under that name?

A. Yes.

Q. And operates with the Lee Sportswear Company as a partner; is that it?

A. She is a partner in that firm there.

Q. So that although she is a partner of Lee Sportswear, she is here in your plant working with you?

A. No, sir, she is not in my plant, she only comes in.

Q. But she is a registered owner with your company?

A. She is a registered owner but I am working myself there.

Q. You registered—you testified before that you were the complete owner.

A. Yes.

Q. How is she registered here as a part owner?

A. In place, not to conflict with the what you call them—the code authorities—so as not to have any trouble—so we went to work and I made Somerset and I gave her the permission to—

Q. Then her registration in fact means nothing?

A. No, positively nothing.

Q. Then how were the girls to know who they were working for when they work at your place? How do they know who to get compensation from?

A. We are carrying a policy, compensation policy, for the Somerset and Somerville Company. If a girl gets injured, if she happens to work at that time on a certain class of merchandise, which came under the twenty-one dollar minimum, she would have claimed then her injuries was what you call—happened under the twenty-one dollar minimum. The same operators have been working under the thirteen dollar minimum and also the twenty-one.

Q. Does Lee Sportswear participate in the payment of the compensation insurance premium?

A. No. Benjamin Fainblatt or the Somerville-Somerset Manufacturing Company pays the premium.

Q. How much time does Marjorie Fainblatt spend here with you in your work?

A. Well, she comes lately—I asked her to help me out since I had that trouble here, to help me out

if the payrolls are right. She comes only on Thursdays, our payroll day is Thursday.

Q. Just to see the payrolls?

A. Yes, that is the only day she comes down, to see if the payroll is right.

Q. Well, does the Lee Sportswear Company pay any of the bills of the Somerville Company?

A. No.

Q. Not at all?

A. No, no.

MR. GIROSKY:

What bills? I wish counsel would specify,—that is a general question.

MR. MOSCOVITZ:

Any bills.

A. No, no bills.

BY MR. MOSCOVITZ:

Q. Did it ever pay for the installation of any of your machinery?

A. No, sir.

Q. Or repairs to your machinery?

A. No.

Q. Do they have to be okayed by Miss Marjorie Fainblatt?

A. No, don't have to be okayed by her.

Q. Do you ever ship any of the produced goods to purchasers directly from your place?

A. Not I.

Q. Who does?

A. Their representative.

Q. Who is the representative?

A. Lee Sportswear.

Q. And where is the representative when that is done?

A. Right in our building.

Q. Who is their representative in your building?

A. One of their men.

Q. Who is it?

A. Chaim Yankel—I can't understand that question.

MR. GIROFSKY:

Do you know who the man is there shipping for Lee?

THE WITNESS:

Yes. Is it necessary to answer that question?

MR. GIROFSKY:

It is.

THE WITNESS:

Sol Fainblatt.

BY MR. MOSCOVITZ:

Q. Is he a son of yours?

A. Yes.

Q. And he is a representative of Lee Sportswear in your plant?

A. In his department.

Q. But he is located in your plant?

A. In my building.

Q. Does he pay rent separately?

A. Yes.

Q. Who is the landlord?

A. I am.

Q. You own the building?

A. I don't own the building but I pay rent for it.

Q. Do you pay for the space that he uses too?

A. I pay for the entire building.

Q. Then he does not pay any rent?

A. I give it to him free of charge.

Q. Yes. Now, through this representative goods

may be shipped to points other than Lee Sportswear in New York?

A. It is his privilege. He receives the goods from us and he does whatever he feels like with it.

Q. You testified before, Mr. Fainblatt, that all your goods exclusively go to Lee Sportswear in New York; is that true?

MR. WHARTON:

He said for the account of Lee Sportswear.

A. I said we are shipping them all direct to Lee Sportswear or direct to New York or upstairs to their department. It is immaterial. I am shipping them to Lee Sportswear. It is their goods. It is not mine. It is their merchandise.

BY MR. MOSCOVITZ:

Q. Then, through the Lee Sportswear Company located in your plant here, shipments are made to the Lee Sportswear Company?

A. Only to the Lee Sportswear, not to nobody else.

Q. How many people are employed at your plant, Mr. Fainblatt?

A. As I said before, it is different times.

Q. How many people are employed today?

A. I think I should judge over sixty today. I am not sure, I think so. I have not taken an inventory.

Q. You would say approximately sixty?

A. Around sixty or more.

Q. Approximately how many were employed on the 1st of September, 1935?

A. The first of September, 1935, I really couldn't tell you. It is hard for me to tell you.

Q. Could you approximate? The same number, more or less?

A. I think there were about fifty or so.

Q. How many people do you employ in a busy season?

A. As I said before, we had close to ninety.

Q. That has been your peak?

A. Very high, so far.

Q. And today you have about sixty?

A. Sixty or probably more.

Q. What is the least number you have ever employed during your operations?

A. When I started the business here, I first put on eight girls and we went along gradually. It grew.

Q. What is your monthly payroll?

A. The same thing, some months I had five thousand dollar payroll, and some months I only got two thousand dollar payroll.

Q. It would run between two and five?

A. Less, than that too. It all depends.

Q. What is the lowest monthly payroll you had?

A. I cannot tell you.

Q. Much lower than two thousand dollars?

A. I don't know.

Q. How much lower?

A. I don't know.

Q. Would it be around two thousand dollars?

A. It could be less too.

Q. Would it be much less?

A. I would have to look up the records.

Q. What was the date of the strike in your
Mr. Fainblatt?

A. I don't know.

MR. GIROFSKY:

Do you recall?

A. How can I recall—

BY MR. MOSCOVITZ:

Q. Would you recall if I said it was between September 18th, 1935?

A. Yes, September 18th, 1935, at ten o'clock, a number of employees—

Q. I just asked the date. Can you tell me what departments in the plant were affected by the strike?

A. The tailoring department.

Q. What does the tailoring department include?

MR. GIROFSKY:

Just a moment. There is no testimony that any departments were affected by the strike.

MR. MOSCOVITZ:

Testimony of witness.

MR. GIROFSKY:

Counsel calls for a conclusion, there. The question is improper.

MR. MOSCOVITZ:

The question was asked and the answer was given.

TRIAL EXAMINER GATES:

I think that is correct.

BY MR. MOSCOVITZ:

Q. What is the tailoring department? What does it include?

A. Where the garments are sewed.

Q. All your sewing?

A. All our sewing and pressing and finishing and everything.

Q. Then that is your whole operation?

A. We call that the operation.

Q. Your whole plant was affected?

A. Besides the cutting.

Q. And you testified before, if I recall correctly,

that much of your cutting is done outside of your plant; is that correct?

A. Yes.

Q. Most of your cutting?

A. It is very hard to answer this question. At certain times more cutting will be done in my place; at certain times more cutting will be done in the jobber's place.

Q. But what you are actually engaged in here is the tailoring?

A. Tailoring and cutting.

Q. Which is the substantial operation in your plant?

A. Tailoring.

Q. Now, how did the strike affect these operations?

A. Well, the strike affected it that we made up less garments.

Q. Do you recall?

A. If there are so many people less working, so many garments less are made up.

Q. Do you recall the approximate number of people that were working immediately before the strike, without any reference to the books?

MR. GIROFSKY:

If he knows. This is his witness.

BY MR. MOSCOVITZ:

Q. I don't want you to answer if you don't know.

A. I have not taken any account of how many people I had.

Q. You don't remember?

A. Not in my head.

Q. You don't remember how many went on strike?

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A. This I may do remember. There went out about twenty girls.

Q. Twenty girls.

A. And the next day they were persuaded two more girls.

Q. Twenty-two?

A. And the following week, we had one boy working upstairs, a handy man, cleans up, puts a belt on a wheel—

Q. Did he go out too?

A. On Monday the following week he went to lunch and he didn't come back. On advice of counsel I can give you what excuse he gave to one of my friends.

Q. I want to know how many people, if you know, went out on strike. Will you give a responsive answer?

A. I will respond, yes. All together there were twenty-three people.

Q. Twenty three?

A. All together.

Q. How many did that leave working for you, approximately?

A. There were more people remained working than they went down on strike.

Q. Your records would show that?

A. Oh, sure.

Q. You will have those records here?

A. On the advice of counsel.

Q. All right. Mr. Fainblatt, you testified before that you did not know how many actually were involved at the time, but now you say there were more left than went out on strike?

A. Yes.

Q. Can you give me the exact number?

A. Impossible. I may be able to do so from the records.

Q. Do you have them with you?

A. Yes.

Q. Will you show me the records?

A. On the advice of counsel.

MR. GIROFSKY:

Never mind the advice of counsel.

A. I can't answer no questions. It is not in the right place.

TRIAL EXAMINER GATES:

We will recess for three minutes.

AFTER RECESS

BY MR. MOSCOVITZ:

Q. Would your records show, Mr. Fainblatt, the number of workers that went out on the day of the strike?

A. Yes.

Q. How many?

A. Yes.

Q. You don't have to give the names, just count the numbers?

A. Twenty-one.

Q. Well, I think you had better name them?

A. All right. Irene Turcherer.

Q. The next one.

A. Louise Senna.

Q. All right.

A. Adele Moretti.

Q. Yes.

A. Mary Morano.

Q. Yes.

A. Ida Giaspantano.

Q. Yes.

A. Helen Bachelegz.

- Q. Yes.
A. Mayme Hobbs.
Q. Yes.
A. Josephine Fedchine.
Q. All right.
A. Got it?
Q. Yes.
A. Carmella Recci.
Q. Yes.
A. Anna Santora.
Q. Yes.
A. Wanda Kelly.
Q. Yes.
A. Mary Spat.
Q. Yes.
A. Ethel Hicks.
Q. Yes.
A. Emma Delaparuta.
Q. Yes.
A. Gertrude Fields.
Q. Yes.
A. Julia Wurzman.
Q. Yes.
A. Rose De Martina.
Q. Yes.
A. Margaret Hovan.
Q. All right.
A. Jennie Targato.
Q. Yes.
A. Julia Meleusci.
Q. Yes.
A. Sophie Zigler.
Q. Those are the ones you say?
A. Walked out on strike.
Q. Do you have there Ida Gesso?
Q. Do you have there Ida Gesso?

A. That is all what I have got.

Q. Do you have Vincent Nekostro?

A. I ain't got nobody.

Q. You have no record of Vincent Nekostro?

A. No.

Q. Do you remember him?

A. No. I don't know no names. I only know
faces.

Q. Would you know him?

A. Is he a man?

Q. A man.

A. If he is here I would know him?

Q. Do you have Frances Cicero? Did she go
out on strike, do you know?

A. Only those here.

Q. How about Tessie Beron?

A. She went the next day.

Q. Then that would be September 19th?

A. Yes, she didn't come to work.

Q. How about Helen Lee?

A. That is not there.

Q. You don't remember about her?

A. Helen Lee?

Q. Yes.

A. Who is Helen Lee? She remained to work.
Helen Lee? Oh, yes, I saw her putting up her hand.
The presser.

Q. That is Frances Cicero.

A. I know her name, the face, the presser.

Q. Frances Cicero?

A. Yes.

Q. Is Vincent Nekostro the fellow that went out
later?

A. That is the fellow that went Monday to lunch
and didn't come back no more.

Q. And Helen Lee, you say never went out?

A. That's my records here.

MR. MOSCOVITZ:

Is Helen Lee in court?

(One of the spectators arose).

A. I don't know, maybe she did—not according to my list here.

Q. Now, would your records show which employees were discharged immediately prior to September 18th? If I read you off a list of names, would you be able to tell me? I will read you some names and you can see if they are right: Angelina Matteis?

MR. GIROFSKY:

What is the question there?

MR. MOSCOVITZ:

The workers that were discharged before the strike.

A. They were not discharged.

BY MR. MOSCOVITZ:

Q. Were they what?

A. Just laid off, or left on their own accord.

Q. Then we will leave that out. We will strike that out of the record. Would your records indicate the number that remained working on the day of the strike?

A. Yes.

Q. Would you add them and see what number you get?

A. Thirty-four. Out of those thirty-four, three left afterwards, that leaves thirty-one.

Q. Thirty-one who remained after the strike?

A. As I say, there remained thirty-four on the day but the following day, two of them quit and

the following week that Jimmie, what we call, quit on the lunch hour.

Q. So that left thirty-one?

A. Yes.

Q. I am afraid we will have to go through the names again because I understand the situation is just a little different and we will see if we can check it now before we go any further? Will you read me the names of those who remained, taking the thirty-one figure?

A. Yes. Mary Grill.

Q. Mary Grill or is it Genevieve Grill?

A. There is no Genevieve Grill. Helen Lee.

Q. Helen Lee is questionable.

MR. GIROFSKY:

I ask that the remark of counsel be left off the record.

MR. MOSCOVITZ:

He said himself he was not sure whether she was there when she stood up.

A. She did not go down that day. That is what my list shows. Genevieve Koproski; Fanny Ackerman.

Q. The next one?

A. Freddie Bittheim.

Q. Yes.

A. Mrs. Smith.

Q. Go ahead.

A. Margaret Kopf.

Q. All right.

A. James Drake.

Q. Yes.

A. Juanita Bartley.

Q. Yes.

A. Elizabeth Plum.

Q. Yes.

A. Jennie Vadinski.

Q. Yes.

A. Louise Bonner.

Q. Anna Lee. Names I don't know—there are a lot of Annas and Jennies.

Q. What is the next one?

A. You have Louise Bonner?

Q. Yes.

A. Tessie Barone. You don't want because she went the next day.

MR. GIROFSKY:

He wants the employees that remained the day of the strike.

MR. MOSCOVITZ:

I asked him for the thirty-one remaining excluding the three who went out a day or two after. That is straight, isn't it?

A. Yes. Vilma Sator. Vilma Sator.

Q. All right.

A. Mary de Nulio.

Q. All right.

A. Mary Kosar.

Q. Yes.

A. Anna Schnitzer.

Q. Yes.

A. Florence Elgard.

Q. Yes.

A. Mabel Rodenbough.

Q. All right.

A. Anna Tenan.

Q. All right.

A. Natalie Rhodes.

Q. Yes.

A. Athena Rhotiardon.

Q. Yes.

A. Sophie Cowalscinc.

Q. Yes.

A. Frances Cicero.

Q. Frances Cicero is the one that stood up?

A. That is out, you are right.

Q. All right.

A. Mary Gabinelli.

Q. All right.

A. Mabel Totten.

Q. Yes.

A. Adeline Potter.

Q. Yes.

A. Al, that is one of the boys working for us.

Q. Yes.

A. Steve Horan.

Q. All right.

A. Eddie Marsh.

Q. Yes.

A. Josephine Lazzatti. That is all.

Q. How about Genevieve Grill?

A. I don't know who Genevieve Grill is.

Q. Now, right off the record you have before you, Mr. Fainblatt, those that you say went out or quit, whatever they did do, after the strike, just put a mark after them.

A. Here you see it.

Q. Out of the list you have given me, Mr. Fainblatt, there are three names I would like to ask you about, if you have any recollection or knowledge. You referred to a gentleman by the name of Al. You also referred to a gentleman by the name of Eddie. That is Eddie Marsh?

A. Yes.

Q. Is there a gentleman by the name of Stephen?

A. Yes.

Q. Now, what type of work are those three men engaged in?

A. General work.

Q. Are they in what department?

A. All over.

Q. And what is their main job, if any?

A. Whatever they are told to do.

Q. Whatever you tell them to do?

A. Yes.

Q. Are they the gentlemen who do the packing?

A. They do everything.

Q. But do they do packing?

A. They do packing, cleaning and everything.

Q. Are they engaged in production?

A. Well, they are engaged in production, they are engaged in production, they are helping me by the tables sometimes, spreading goods, and so forth.

Q. Do they cut?

A. They are not cutters.

Q. Do they sew?

A. No, they help me.

Q. They are just general handymen?

A. Yes, exactly.

Q. Mr. Fainblatt, Genevieve Grill that you referred to—

A. I know one Grill—I got in the place one Grill.

Q. You named it and I have it on our list. I understand that is correct.

A. Mary Grill.

Q. I would like to inquire now, do you know whether or not she is married?

A. Which Grill?

Q. Genevieve Grill?

A. I don't know about her.

Q. Is Mary Grill married?

A. No, she is single.

Q. Do you know whether or not Genevieve Grill is married?

A. I haven't got no Genevieve Grill in my employ.

Q. Do you know whether or not Genevieve Koproski is the married name of Genevieve Grill?

A. I don't know her maiden name. There is a Genevieve Koproski. If it is her maiden name or her married name, I don't know.

Q. Genevieve Grill does not appear on your list?

A. No.

Q. Paragraph Three of the Complaint in this case, Mr. Fainblatt, refers to certain persons alleged to have been discharged. Have you seen the Complaint in this case?

A. What is that?

Q. Have you seen the Complaint in this case? I will show you the Complaint in this case.

A. I seen the names in it.

Q. And can you tell me whether or not the work that those people were doing is now being done by new employees?

A. Well, certainly it is being done by other employees. As they are not doing it, somebody else does it.

Q. Were new persons hired for their work?

A. Not exactly for their work.

Q. But new persons were hired for the number that went out or were alleged to have been discharged; is that it?

A. Certainly we hired new people.

Q. Do you have any records or recollections of when these new persons were taken on?

A. I have got no recollection.

Q. Have you new persons that have been hired to take the place of those who went out on strike?

A. Yes, sure.

Q. Do you have any record of when they were taken on or any recollection?

A. Recollections, I have not that.

Q. Do you recall whether it was immediately after or a week, or ten days.

A. I can't tell you.

Q. Can you approximate a time?

A. Impossible.

Q. Can you tell me how long you operated with a decreased employment roll?

A. Impossible to tell you that, don't know, except for my books to show.

Q. Will the books that you bring in this afternoon show that?

A. I don't know, I don't think so, maybe they do and maybe they don't. Those books will not show.

Q. I am simply interested in finding out about how long you operated with a lesser number of employees and when you started to take new people.

A. I couldn't tell you off hand, it is impossible.

Q. You do the hiring, don't you?

A. Yes.

Q. And you did take on new people, didn't you?

A. Must—we got new people.

Q. Was it long after the strike started that you took on new people?

A. Quite some time.

Q. Quite some time. I am trying to fix it as a matter of approximation. Would you say a month?

A. So hard for me to tell you, counsellor, I have records and my books show that I had today Mary

and tomorrow Jennie, but when—I can't carry it in my mind, it is impossible.

Q. Would you look into that and bring that back with you this afternoon?

A. If it will be necessary, I will bring it.

Q. I will appreciate it. Do you do any advertising, Mr. Fainblatt?

A. No, not yet.

Q. You have not done any at all?

A. No.

Q. Do the Lee Sportswear do advertising?

A. I don't know their business.

MR. GIROFSKY:

What information is that for?

MR. MOSCOVITZ:

For whatever business you are engaged in,—letting the public know what you are doing.

A. I have nothing to do with the product.

Q. Does your product have a trade name?

A. No.

Q. Does the products that Lee Sportswear sell have a trade name?

A. I don't know their business.

Q. Do you put a label on the finished product?

A. No.

Q. There is no identification whatsoever?

A. No.

Q. Do you use any salesmen?

A. No.

Q. Does Lee Sportswear Company use salesmen?

A. This is their business.

MR. GIROFSKY:

If he knows.

MR. MOSCOVITZ:

Naturally, if he knows. If he does not know, I assume that he won't be able to answer.

A. I don't know their salesmen. I don't know if they are using any salesmen.

BY MR. MOSCOVITZ:

Q. You never discussed the matter with your sons or daughter?

A. About what?

Q. If they use salesmen?

A. This is their own affairs, I have my own affairs to take care of.

Q. Have you ever had any communication with anyone connected with Lee Sportswear that was a salesman?

A. No.

MR. GIROFSKY:

What sort of communication?

MR. MOSCOVITZ:

Any communication.

A. No.

BY MR. MOSCOVITZ:

Q. Do you know whether or not any one of your sons goes on the road for Lee Sportswear?

A. I am not interested in their business.

Q. Do you know?

A. I am not interested in their business.

Q. I am not asking you whether you are interested.

A. I don't know if they are going on the road or not.

Q. You don't know?

MR. GIROFSKY:

I object to these questions. I object to Mr. Moscovitz proceeding any further. The line of

questions have been answered. He does not know the business activities of Lee Sportswear. He is engaged in manufacturing these garments for himself.

MR. MOSCOVITZ:

I think we might well, Mr. Examiner, disregard the corporate fiction or the partnership fiction in this case because it is so obvious what Mr. Fainblatt's identity is with Lee Sportswear Company. He is intimately acquainted with its operation. No one could believe that a man whose sons and daughter—

TRIAL EXAMINER GATES:

I don't think you should pursue a line of questioning on which witness is not competent to answer.

MR. MOSCOVITZ:

As to whether or not he is competent seems to me a point of information. It seems to me he is evading the question.

MR. GIROFSKY:

He is your witness, Mr. Moscovitz.

MR. MOSCOVITZ:

Yes, I know, I know he is my witness, but I also know that he is a hostile witness here under subpoena and the rules of evidence are not controlling. I think the record can speak as to whether there is any neutralization or impropriety. You can take objection.

TRIAL EXAMINER GATES:

Proceed.

BY MR. MOSCOVITZ:

Q. Do you have any branch outlets, Mr. Fainblatt?

A. What is that?

Q. Do you have any branches?

A. No.

Q. This is the only plant?

A. The only plant I have.

Q. You will be back this afternoon, won't you, Mr. Fainblatt, with the records that we have requested?

A. If it will be necessary. I will be back with them:

MR. MOSCOVITZ:

What time will we be here, Mr. Examiner, this afternoon.

TRIAL EXAMINER GATES:

It depends on the convenience of counsel. As far as I am concerned, it makes no difference when we recess for lunch and how long we recess. I would just as soon recess now but it is up to counsel.

(Thereupon at twelve twenty P. M. a recess was taken until one o'clock P. M.)

AFTER RECESS

BENJAMIN FAINBLATT, witness on the stand at time of recess, resumed, as follows:

Direct Examination (Continued)

BY MR. MOSCOVITZ:

Q. Have you brought the books that I asked for?

A. Here is all my books, here.

Q. I am talking about the Somerset Manufacturing Company. What is the book that you have before you?

A. The Somerville Manufacturing Company—

Q. The book before you, I mean.

A. No, I mean now, the Somerset Manufacturing Company—what we charging for the goods.

Q. For the finished product shipped out?

A. Made up for Lee Sportswear.

Q. All right. Now what date does it start?

A. August 27th.

Q. 1934?

A. Here it is.

Q. What do you show for August?

A. It shows twelve dozen blouses at so much and so much, a price, one dollar thirty-five cents a dozen. Twelve dozen middies at one dollar and twenty-five cents a dozen.

Q. That is the price you charged the Lee Sportswear?

A. That is what I charged for making up that number of blouses.

Q. Then you have—

A. One hundred dozen middies again.

Q. That is August?

A. August 29th.

Q. All right.

A. August 29th again. Ten dozen, Lot 500 shirts, one dollar and seventy-five cents a dozen.

Q. That is pleated skirts?

A. Yes, pleated skirts. Oh, you know what is pleated skirts.

Q. I used to wear skirts once.

A. August 30th, four dozen pleated skirts—forty-seven dozen—sixty-two and one-twelfth dozen blouses; thirty-six dozen skirts; sixteen dozen blouses—higher price and lower price. Sixteen dozen blouses.

Q. That is August 30th, 1934?

A. Yes.

Q. Then what have you got?

A. Then we got to September: Fifty-five dozen skirts, one dollar and seventy cents, pleated skirts.

Q. September 1st, 1934, you have just been referring to?

A. Yes.

TRIAL EXAMINER GATES:

That would be winter business?

THE WITNESS:

Only the winter stuff. See, at that time we made blouses and middy blouses, what we call, you know, the little blouses the girls wear and the little skirts we had been making that time. Thirteen dozen middies, one dollar twenty-five cents.

Q. On September 4th, 1934, what have you got there?

A. One hundred and thirty-two blouses at two dollars and twenty-five cents. Twenty-seven and nine-twelfths of a dozen samples, blouses.

Q. That is September 4th?

A. Yes.

Q. What else?

A. Seven and seven-twelfths of a dozen also blouses, at a dollar and seventy-five cents. This is skirts—and so is this here skirts.

Q. All 1934?

A. Yes.

Q. Go on.

A. Fourteen and one-twelfths of a dozen at one dollar and twenty-five cents; thirty-seven dozen at one dollar and fifty cents. September 3rd, thirteen and four-twelfths of a dozen skirts.

Q. Just give me the volume of dozens in a day.

A. Thirteen and four-twelfths dozen. September 5th, nine-twelfths of a dozen—thirty-one and nine-twelfths of a dozen. I am sorry. Sixty and one-twelfths of a dozen. Ninety-four and four-twelfths of a dozen; fifteen and ten-twelfths of a dozen; five and eight-twelfths of a dozen.

Q. And what is that volume—sixteen hundred?

A. That is value. They valued their merchandise, what it cost them.

Q. I see. So it is the value of shipments of that day?

A. Three hundred thirteen dollars and ten cents. That is what they paid me, three hundred thirty-eight dollars.

Q. Go on.

A. The 7th. Fifty and two-twelfths dozen skirts; thirty-one dozen blouses and a dozen skirts; and three dozen blouses.

Q. That is the value of—

A. I don't know their value. One hundred twenty-nine dollars and fifty cents.

Q. For September 7th, 1934?

A. For that work what I made that day.

Q. And September 11, 1934?

A. One hundred and twelve and one-twelfth of a dozen in blouses; twenty-four and one-twelfth of a dozen also blouses.

Q. What are those?

A. A package of—what does this mean. I gave a package along to one of our men to take it back to New York.

Q. Raw materials?

A. I suppose so.

Q. What is that?

A. Good ends.

Q. Good ends?

A. Yes.

Q. On the 13th of September?

A. Fifty-seven and two-twelfths of a dozen and this is two-twelfths of a dozen pleated skirts, seventeen and two-twelfths of a dozen, twenty-six dozen skirts. On the 14th, eighty-seven and eleven-twelfths of a dozen blouses, twenty-six dozen skirts, three skirts, three skirts, five dozen skirts, pleated.

Q. On September 15th?

A. Eighteen pieces. See, he marked it pieces. This is skirts because I know the lot number. Twelve and six-twelfths of a dozen pleated skirts; sixty-seven and seven-twelfths of a dozen, call it also skirts. On the 17th—

Q. What is this? One lot of buttons?

A. They sent us in too many buttons. We are sending this back. See, it is not charged.

Q. On the 17th of September?

A. Seven pieces, also skirts. See, the lot number will correspond with this here.

Q. Just read it off, you don't have to explain.

A. Seven pieces—thirty-nine and ten-twelfths of a dozen, what is also skirts.

Q. On September 17th?

A. Twenty-four and eleven-twelfths of a dozen.

Q. Skirts?

A. Yes.

Q. September 18th?

A. Twenty-one and six-twelfths of a dozen.

Q. What are they, skirts?

A. Yes, it looks like skirts. Six and three-twelfths of a dozen.

Q. Skirts?

A. I suppose so. Forty-five pieces, call them

skirts too. Two and one-twelfth dozen skirts. I don't know what that is. I can't remember from a year ago. Eighty-nine pieces. I think this is pleated skirts. Twenty-one and one-twelfth of a dozen, make that blouses. Six pieces of skirts, pleated skirts. Thirty-two dozen blouses.

Q. September 20th?

A. Forty and five-twelfths of a dozen, it says lot number 502. This I know. Forty-six dozen skirts, eighteen dozen skirts, four blouses, thirty-three and one-twelfth dozen blouses. Nine-twelfths of a dozen skirts. Twenty-four and nine-twelfths of a dozen skirts.

Q. On September 21st?

A. I am getting tired—I am a lucky man I can read. Fifty and eleven-twelfths of a dozen blouses. Fifty-nine and seven-twelfths of a dozen skirts. Eleven and five-twelfths of a dozen skirts. Forty-nine pieces pleated skirts. September 22nd. Eighteen and five-twelfths of a dozen skirts. Eleven and a half dozen pleated skirts. Twenty-three and one-twelfth dozen skirts. Thirty-seven and one-twelfth of a dozen pleated skirts. Seventeen and ten-twelfths of a dozen skirts. Fourteen dozen blouses.

TRIAL EXAMINER GATES:

What is the date of that?

A. September 24. Now, it goes twenty-five; thirty-four and two-twelfths of a dozen skirts; eleven and four-twelfths of a dozen blouses; thirty-one and one-twelfth of a dozen pleated skirts; seventy-two and seven-twelfths of a dozen blouses; ten and five-twelfths of a dozen skirts. Thirty-eight dozen skirts.

Q. Now you are talking about—

A. September 26th.

Q. Go on.

A. Sixty-eight dozen blouses.

Q. September 27th continued?

A. Twelve and six-twelfths of a dozen skirts. Twenty-two and seven-twelfths of a dozen skirts. You are tiring me out.

Q. You are now on September 26th, I think, is that right?

A. Yes.

Q. Go on.

A. Nineteen and eleven-twelfths dozen blouses, forty-nine and three-fourths dozen skirts. Thirty-eight dozen and two-twelfths of a dozen skirts. Nine and four-twelfths of a dozen skirts. Thirty-four and a half dozen skirts. Twenty-nine and ten-twelfths of a dozen skirts. Six skirt samples.

Q. Now you come to October 5, 1934?

A. Yes.

Q. Go on.

A. Fourteen dozen skirts, ninety-nine and three-twelfths of a dozen assorted skirts, mixed lot. Twenty-eight dozen skirts. Twenty-eight and six-twelfths of a dozen pleated skirts.

Q. That is October 9th?

A. Yes, October 9th. Sixty and three-twelfths dozen children's skirts. They are all children's skirts. Sixty-two dozen tweed skirts.

Q. October 10th?

A. Yes. Two dozen pleated skirts. Three skirts pleated. October 11th, twenty-seven and nine-twelfths of a dozen children's skirts. Twenty-seven and five-twelfths of a dozen children's skirts. Twelve and eleven-twelfths of a dozen pleated skirts. Twenty-one and eight-twelfths of a dozen skirts. October 10th.

Q. Now you go to a sheet which shows October 10, 1934?

A. Yes. Seven dozen pleated skirts. October 14th, twenty-eight and six-twelfths of a dozen skirts.

Q. October 15th?

A. October 15th. Nine dozen navy skirts, seven dozen pleated skirts. Twenty-seven and eleven-twelfths of a dozen skirts.

Q. October 18th?

A. Twenty-five and six-twelfths of a dozen skirts. Twenty-seven and eleven-twelfths of a dozen skirts. Twenty-seven and eleven-twelfths of a dozen skirts. Twenty-four and eleven-twelfths of a dozen skirts.

Q. Then you go to October 22nd?

A. October 22nd. Thirty and ten-twelfths of a dozen rompers, gym rompers, you know, those gym rompers, if you ever saw the girls in high school, the way they dance around, so this is rompers. It is made out of cotton goods.

Q. October 23rd:

A. Twenty and one-twelfth of a dozen skirts. October 23rd again. Thirty-three and five-twelfths of a dozen pleated skirts. No plaid skirts. October 25th, twenty-four and ten-twelfths of a dozen plaid skirts. This was shipped before without being charged so it says not completed.

Q. October 26th.

A. Sixteen and one-twelfth of a dozen pleated skirts.

Q. October 29th.

A. Eight and nine-twelfths of a dozen rompers.

Q. October 30th.

A. Sixty-six dozen jackets, children's jackets.

Q. What is the following day?

A. October 31st. Ski pants.

Q. How many?

A. Fifteen and five-twelfths of a dozen ski pants.

Q. Just a couple of more pages, then we will be finished. Now November 2nd.

A. November 2nd, ten dozen jackets; five and one-twelfth of a dozen jackets.

Q. Now, what is that?

A. That is November 8th. Plaid detachable skirts, eighteen and three-fourths of a dozen. November 18, thirty-nine and four-twelfths of a dozen skirts. November 10th, seventeen and ten-twelfths of a dozen corduroy ski pants.

MR. GIROFSKY:

What date is that?

THE WITNESS:

The 10th. Ten and four-twelfths of a dozen jackets. Ten and four-twelfths of a dozen ski pants.

BY MR. MOSCOVITZ:

Q. Now, November 14th.

A. Sixteen dozen skirts. November 14th again. Seven and eight twelfths of a dozen skirts. Nine and seven-twelfths of a dozen skirts.

Q. Just read November 16th.

A. November 16th, four and a half dozen samples. Forty dozen ski pants. Seven dozen pleated skirts. Four and two-twelfths of a dozen jackets.

Q. Isn't that fifty jackets?

A. That makes four and two-twelfths of a dozen.

Q. I am sorry. Now, that is all right. While you are resting, Mr. Fainblatt, would you mind going over to about September 1st, 1935?

A. Seventy-two and five-twelfths of a dozen.

Q. Dozens?

A. Yes. Eleven and eight-twelfths of a dozen. Forty-seven and ten-twelfths of a dozen. Fifty dozen. Eighteen dozen, and nine-twelfths.

Q. September 2nd?

A. Seventeen dozen, sixteen and two-twelfths of a dozen, nineteen and four-twelfths of a dozen. Nine and eight-twelfth dozens.

Q. September 3rd?

A. Ten and ten-twelfths dozens. Ten and ten-twelfths dozens. Fourteen and eight-twelfths dozen. Fourteen and eight-twelfths dozen. Fourteen and eight-twelfths dozen.

Q. September 4th. These are all references to 1935?

A. These are all references to 1935. Twenty-five dozen.

MR. GIROFSKY:

What is the date?

MR. MOSCOVITZ:

September 4, 1935.

A. September 5th, twenty-nine dozen, forty-six dozen, nineteen dozen.

Q. September 7th.

A. Seventeen and six-twelfths dozen.

Q. September 9th.

A. Forty-seven and one-twelfth dozen. Twelve and eight-twelfths of a dozen. Twelve and eight-twelfths of a dozen. Two hundred and five and six-twelfths of a dozen.

Q. September 10th.

A. Thirteen and four-twelfths dozen. Thirteen and four-twelfths dozen. Thirteen and four-twelfths dozen.

Q. September 14th.

A. Fifteen and four-twelfths dozen. Fifteen and

four-twelfths dozen. Fifteen and four-twelfths dozen.

Q. September 16th.

A. Thirty-eight and four-twelfths dozen.

Q. September 18th.

A. Sixteen and four-twelfths dozen. Sixteen and four-twelfths dozen. Sixteen and four-twelfths dozen. Thirty-eight and nine-twelfths dozen. Thirty-two dozen.

Q. September 20th.

A. Seventy-two and four-twelfths; twenty-one and six-twelfths; that is all on that day.

Q. September 21.

A. Nine and two-twelfths dozen. Nine and two-twelfths dozen.

Q. September 23rd.

A. Eleven dozen. Twenty-four dozen. Two and five-twelfths of a dozen.

Q. September 24th.

A. Twenty dozen. Fifty and six-twelfths dozen. Twenty-six dozen.

Q. Let's have this straight, would you read that over again for September 24th?

A. Twenty dozen, fifty-seven and six-twelfths dozen and twenty-six dozen.

Q. Now October 1st, 1935.

A. Twenty-one and one-third of a dozen.

Q. Isn't that twenty and a third dozens?

A. I am sorry. Twenty dozens, nineteen dozens and one-sixth. October 1st again, twenty-five and ten-twelfths of a dozen. Twenty-four and two-twelfths of a dozen.

Q. Now, October 2nd.

A. Twenty-two and six-twelfths. Eighty-one and nine-twelfths. Twenty-three and eight-twelfths.

Seventeen and six-twelfths. Sixteen and eight-twelfths. Thirteen and four-twelfths.

Q. October 3rd,

A. Fifty-three dozen. Twenty-one and four-twelfths dozen. Twenty-six and eight-twelfths dozen. ~~Twenty-six dozen.~~

Q. October 4th.

A. Seventeen and one-twelfth dozen. Seventeen and one-twelfth dozen. Thirty-two and six-twelfths dozen.

Q. October 10th.

A. Thirty dozen. Thirty dozen. Thirty dozen.

Q. October 14th.

A. Twenty-five dozen. Twenty-seven and ten-twelfths dozen. Sixty dozens.

Q. Mr. Fainblatt, did you bring with you records which would show when new employees were taken on by you after the strike?

A. I did not. Maybe it is in the book.

Q. Do you know approximately how long after the strike started that you had the same number of workers employed as you did the day of the strike?

A. At that time I didn't have the amount of employees. My memory—to my best recollection, I didn't have the amount of employees until after New Years.

Q. Until after January, 1936?

A. Yes.

Q. And it was then that you had—

A. Then I started to put in people to work, more people.

Q. Yes. Well, was it then that you had the same number of workers as you had the day of the strike?

A. After New Years we started.

Q. After the New Year. Now, you say you have

approximately how many working?

A. Over sixty surely.

Q. And at the start of the new year, you had the same number as you had the day of the strike?

A. I didn't check.

Q. Now, between September 18, 1935, and the new year, you did take on new employees didn't you?

A. I took on some.

Q. You took on some, and was it over a period of days, or did you take them all on at one time?

A. No, over a period of time.

Q. Can you tell me approximately how many?

A. Impossible for me to tell you.

MR. MOSCOVITZ:

That is all.

MR. GIROFSKY:

If Your Honor please, I wish to state that the respondents' rights are not being waived here by reason of any cross examination that I may subject him to.

TRIAL EXAMINER GATES:

Certainly.

Cross Examination

BY MR. GIROFSKY:

Q. Mr. Fainblatt, you took some new people in after the strike?

A. Yes.

Q. And among those persons that you took back, some of those persons had gone out at the time of the strike; is that right?

A. No.

Q. Didn't you know a Miss Potter?

A. She did not go on strike.

Q. Didn't she leave at the time of the strike?

A. She didn't report to work for some time and then she came back to me.

Q. And did you advertise for these girls.

A. No.

Q. Have you ever refused re-instatement or re-employment to any of the girls who did leave?

A. No.

Q. And these girls who did leave—have any of these girls who did leave on September 18th applied for employment? *

A. No.

Q. Do you know Elizabeth Scatcher?

A. If I see her face I will know her.

MR. GIROFSKY:

Is Elizabeth Scatcher in Court? If so, stand up.

(One of the spectators arises.)

BY MR. GIROFSKY:

Q. Do you know that girl?

A. I know her face.

Q. Did you ever discharge her from work?

A. No, sir.

Q. Do you know Angelina Matteis?

(One of the spectators stands up.)

A. No, sir.

BY MR. GIROFSKY:

Q. You never discharged her from employment, did you?

A. No.

Q. Do you know Lorraine Heitz? You know her?

A. If I will look at her I will know her.

Q. Mary Gecik?

(Spectator stands up).

- A. They are both alike.
- Q. Did you ever discharge her?
- A. No. I believe she went out on strike.
- Q. Did you discharge Fay Katz?
- A. No.
- Q. And Ethel Rice?
- A. No.
- Q. Anna Santora?
- A. No, she worked till the last minute. She went down with the girls. This is on my list there, you can see.
- Q. And you say they went down of their own accord; is that right?
- A. Yes.
- Q. Have they ever applied for re-instatement?
- A. No.
- Q. Have you ever refused to re-instate any of these girls?
- A. No.
- Q. Did you ever tell any of these girls named by me that they could not work at your plant because of any organization affiliations?
- A. No.
- Q. Your answer is no?
- A. No.
- Q. Now you don't buy the raw materials that are received at your plant; do you?
- A. No.
- Q. And you don't ship the manufactured garments out, do you?
- A. No.
- Q. You do press the garments?
- A. Yes.
- Q. And do you deliver the package to the Lee

Sportswear representative on the premises in Somerville, don't you?

A. Yes.

Q. And Lee Sportswear then disposes of the finished garments?

A. I suppose so. That is what they do, that is their business.

Q. Now, who pays the carrier for taking these finished garments?

A. I don't know.

Q. Do you pay?

A. No, I don't.

Q. Do you direct the carrier to take these goods anywhere?

A. No.

Q. That is all taken care of by the Lee Sportswear?

A. By the jobber.

Q. And as I take it then from your testimony here, you are only engaged in manufacturing sports garments in Somerville; is that right?

A. That is all we do, nothing else.

Q. And you have no salesmen?

A. No.

Q. To sell garments?

A. I have got no garments for sale.

Q. Who pays for this manufacturing process?

A. What do you mean?

Q. Who pays you for manufacturing?

A. Lee Sportswear.

Q. I observe in the records here that you were reading to Mr. Moscovitz some shipments were made to Lee Sportswear, and on a few occasions some to Montgomery Ward, is that right?

A. Yes.

MR. MOSCOVITZ:

Montgomery Ward where?

THE WITNESS:

It says there, I suppose.

BY MR. GIROFSKY:

Q. On all these shipments recorded in here, who pays for the manufacturing of these garments?

A. Lee Sportswear. You see, it is charged to Lee Sportswear.

Q. Who paid for all the garments you accounted for to Mr. Moscovitz during the direct examination?

A. I still don't understand you.

Q. Who paid you for making these garments that you numbered?

A. Lee Sportswear.

Q. Did you ever pay Lee Sportswear for any raw materials?

A. No, sir.

Q. Did you ever buy raw materials from them?

A. No, sir.

Q. They were shipped then by the Lee Sportswear?

A. Yes.

Q. Who paid for the shipping of the goods?

A. Lee Sportswear.

Q. You mentioned something about insurance in answer to Mr. Moscovitz' question, compensation insurance. You are referring to compensation insurance as required, aren't you, under the laws of the State of New Jersey; is that right?

A. Yes.

Q. You don't carry any federal compensation insurance?

A. I carry—I carry only what we call compensation.

Q. For the New Jersey Compensation Law, is that right?

A. Yes.

Q. Now, is there a Lee representative on your premises?

A. Yes.

Q. And he is the one you turn the goods over to after you have completed your job?

A. Yes.

Q. And I believe you testified that that was Sol Fainblatt?

A. Yes.

Q. Is he on your payroll?

A. No.

Q. And what does he do with the goods when you turn them over to him? Is that immaterial to you?

A. Positively, yes, sure.

Q. Now, Mr. Fainblatt, is this your book of accounts for the Somerset Manufacturing Company?

A. Yes.

Q. Now, this book shows all receipts and disbursements, is that right?

A. Yes.

Q. And I note on page number two, which is the first page of entries, income from Lee Sportswear. Is that right?

A. One thousand dollars, you mean.

Q. Money received?

A. Sure.

Q. Do you have any entries in this book to indicate that you received money from anyone other than the Lee Sportswear?

A. No, no, no.

Q. And what does that money represent, the pur-

chase or rather payment for your services in manufacturing garments; is that right?

A. This here money represents the labor, or I will call that labor, for manufacturing garments. That is what it represents.

Q. And there are no other accounts entered into this book to indicate that you received any other money from any other concern than Lee Sportswear?

A. No, sir.

Q. Have you any financial interest in Lee Sportswear?

A. No, sir.

Q. Have you ever had any financial interest in Lee Sportswear?

A. No, sir.

Q. Going back for a moment, do you have any other books of accounts of the Somerset Manufacturing Company showing receipts and disbursements?

A. No, sir, they are all there.

MR. MOSCOVITZ:

Mr. Examiner, counsel for respondent and I have agreed upon a stipulation which I shall now state for the record. If I am wrong, as I go along, in my recital, I will stand corrected.

It is agreed and stipulated that the Somerville Manufacturing Company, also known as the Somerset Manufacturing Company, manufacturers raw material for the exclusive account of the Lee Sportswear Company, New York City.

MR. GIROFSKY:

Manufactures and converts raw materials of the Lee Sportswear Company.

MR. MOSCOVITZ:

Converts raw materials of the Lee Sportswear Company into a finished product for the exclusive account of the Lee Sportswear Company, in New York City. Correct so far?

. It is further stipulated and agreed that the Lee Sportswear Company, New York City, sells and distributes for its own account the entire aforementioned converted manufactured products throughout the United States.

MR. WHARTON:

The reference above to the Somerset Manufacturing Company, formerly the Somerville Manufacturing Company, is corrected to read: The Somerset Manufacturing Company. The Somerville Manufacturing Company has ceased to do business on or about February 15, 1935, prior to which time the said Somerville Manufacturing Company furnished manufactured goods for the sole and exclusive account of the Lee Sportswear Company in the same manner as the Somerset Manufacturing Company is furnishing the same at the present time.

BY MR. GIROFSKY:

Q. Mr. Fainblatt, these shipments listed in the book pertaining to accounts other than Lee Sportswear, as for instance, the name of Montgomery Ward, as a shipment to that concern, they were made and charged to the account of the Lee Sportswear Company, is that right?

A. Yes.

Q. And those shipments were made for Lee Sportswear?

A. Yes.

Q. And the shipment was made through the representative of the Lee Sportswear Company, who was present on your premises at Somerville?

A. Yes.

Q. Is that right?

A. Yes.

Q. And you did not receive any money from those accounts?

MR. MOSCOVITZ:

Did he or did he not?

MR. GIROFSKY:

This is cross examination.

BY MR. GIROFSKY:

Q. You did not receive any money from Montgomery Ward, did you?

A. No.

Q. The only money you ever received was from Lee Sportswear?

A. Yes.

Q. And that for the sole purpose of payment for manufacturing this material into garments?

A. That is right.

Q. And going back, you stated that you had no financial interest in Lee Sportswear? Is that right?

A. Yes, that is right.

Q. You were never a partner in Lee Sportswear Company, were you?

A. No.

Q. Does the Somerville and Somerset Manufacturing Company—they never paid any moneys to Lee Sportswear, did they?

A. No, sir.

Q. In the way of dividends?

A. No, sir.

Q. Or returns?

A. No, sir.

Q. And the money you used in establishing this plant is solely your money, is that right?

A. Yes.

Q. Money raised by you?

A. Exactly.

Q. Mr. Fainblatt, the day these girls walked out, you testified September 18th, 1935, there were more girls remaining in the plant and continuing on in their work, than there were who left?

A. Yes.

Q. Is that right?

A. Yes.

Cross Examination

BY TRIAL EXAMINER GATES:

Q. Just to clear up my own mind, Mr. Fainblatt, is your relationship with Lee Sportswear—

A. Yes.

Q. Similar to the usual jobber and contractor relationship? Is there anything unusual about your relationship?

A. The only unusual thing is, whereas they are not supplying other contractors with work, they will supply me with work. That is the relationship between father and children.

Q. No other relationship?

A. Positively no other, Mr. Examiner.

Q. Do you know how Mr. Sol Fainblatt spends his time?

A. Yes.

Q. Just answer the question.

A. He goes in to New York in the morning and gets his orders, comes back about two o'clock in the afternoon, and he ships his goods out.

Q. He takes charge of all goods?

A. All goods which I manufacture. In fact, they send in some goods for an order.

Q. Then spends the rest of the afternoon there?

A. Yes, spends all the spare time that he can.

Q. I am a little bit uncertain about these shipments that come in direct from mills. I believe you testified that there were some shipments that came to you direct from mills.

A. Lee Sportswear is saving the time this way, that it had to go to New York, then it has to be shipped back again to me. Whereas it is more advisable to go direct from there where they save probably a day or sometimes two days.

Q. So they order for delivery to you?

A. Yes, they order their goods to be delivered to me.

Q. Does that account for the principal amount of goods that comes to you not already cut?

A. This is the uncut goods.

Q. Yes; do you get any uncut goods from them in New York?

A. Yes.

Q. In addition to this?

A. Yes. I got today uncut goods from New York.

Q. What proportion of the goods that you would make up do you have to cut?

A. Well, there are certain times when most of the goods are cut on the other side, but at certain times, especially lately, we have been cutting every-

thing practically on the other side, but lately they have increased their business and consequently they have not got so much facilities for cutting all their goods and in order to relieve them in cutting it, they send me the raw material and I cut it on my premises, which I am getting paid for.

Q. Is the proportion that you have to cut—does the proportion that you have to cut vary as to the production that you are manufacturing? That is, does it vary with winter or summer goods or particular lines?

A. The winter goods practically, we didn't do no cutting to speak of, but on the summer goods it is already different entirely. We are doing today the most cutting in our premises, whereas in the fall goods, we didn't.

Q. Do you remember the names of the codes that you operated under?

A. Yes.

Q. What are they?

A. The one code was the skirt code, which was under the twenty-one dollars minimum. We paid our girls piece work, but the price was such—

Q. That was the Skirt and Blouse Code?

A. No, there are two kinds of blouses, children's blouses and women's blouses. The children's blouses was under the thirteen dollar minimum and children's skirts were under the thirteen dollar minimum.

Q. What code was that?

A. It was the thirteen dollar minimum, forty hours, children's wear.

Q. Children's and infants' wear?

A. Yes. The women's skirts, on the other hand, we made women's skirts up to February 15th, when

we were finished. We operated them under the twenty-one dollar minimum. In fact, girls made as much as thirty dollars, but we watched that they had to make twenty-one dollars so as not to infringe upon the law.

Q. Those were the only two?

A. Yes, that is why we had to have two firms, not to conflict.

Re-Direct Examination

BY MR. MOSCOVITZ:

Q. You gave certain testimony this morning, Mr. Fainblatt, that I would like to tie in to my own satisfaction so I could be straight on it. The Lee Sportswear Company in New York is owned as a partnership by your sons and your daughter. Is that correct?

A. Yes.

Q. Your daughter, Marjorie Fainblatt, is also registered as an owner in the County Clerk's office in this county of Somerset, as owner of the Somerset Manufacturing Company?

A. Yes.

Q. Your daughter, Marjorie, also makes up your payrolls for you?

A. Yes.

Q. Do you pay her for doing that?

A. Yes.

Q. On the basis of a weekly salary?

A. Yes, yes, sure.

Q. The representative who is on your property for the Lee Sportswear Company, according to your testimony, is paid by the Lee Sportswear Company?

A. Yes.

Q. Is he your son?

A. Yes.

Q. And you were previously associated in a supervisory capacity with Lee Sportswear?

A. Yes, before I went into business.

Q. Before you came to Somerville?

A. Yes.

Q. The space that is used by your son as representative of Lee Sportswear in your plant is paid for by you. Is that not so?

A. By me, it is my property.

Q. Was this representative of Lee Sportswear in Somerville before the strike?

A. Yes.

Q. He was?

A. Yes, sure.

Q. How long has he been here as a representative of the company?

A. Several months.

Q. Before the strike?

A. He was before the strike several months.

Q. You are sure he didn't come in after the strike?

A. No, sir.

Q. Does Lee Sportswear Company owe you any money?

A. No, sir, they pay in advance.

Q. They pay in advance?

A. I owe them money.

Q. Are you sure that none of the installations of machinery in your plant were paid for by Lee Sportswear?

A. They were paid by Benjamin Fainblatt.

Q. Does Benjamin Fainblatt operating in Somerville Manufacturing Company keep his financial

account separate from the financial account of the Lee Sportswear Company?

A. Positively.

Q. You say that the people referred to by Mr. Girofsky in his cross examination of you were not discharged?

A. No, sir.

Q. What were they?

A. What were they?

Q. What did happen that they left?

A. Well, you know in our line—

Q. Were they laid off or discharged or what?

A. They were just what you call temporarily laid off.

Q. Is your answer responsive generally to all the names that Mr. Girofsky gave you?

A. Yes, positively.

Q. What is your explanation of what happened at that time?

A. I don't understand that question.

Q. Insofar as the termination of their employment is concerned, were they discharged?

A. No, they were not.

Q. Were they laid off?

A. They were laid off until we get work, what you call temporary, what you call.

MR. GIROFSKY:

You are speaking now of the six girls whose names appear in the complaint?

MR. MOSCOVITZ:

Yes.

BY MR. MOSCOVITZ:

Q. You say they were temporarily laid off. That is the position you take?

A. Yes.

Q. For what reason?

A. For lack of employment—lack of work rather.

Q. Lack of work?

A. That's it.

Q. As I recall from your testimony, there is a statement by you that you never told the girls that they couldn't work for you because they belonged to the Union?

A. That is certainly that way, yes.

Q. And that these girls never applied to you for re-instatement?

A. Positively they did not.

Q. Yes. Did you ever confer with a representative of these girls for purposes of re-instatement?

MR. GIROFSKY:

If Your Honor please, there is no testimony in this case to indicate that the girls had a representative, and assuming that they might have had a representative, that any representative was properly delegated in pursuant to the terms of the Act to act for these girls. I ask that this question be ruled out.

TRIAL EXAMINER GATES:

I think the question is pertinent, although you are correct in what you say.

MR. GIROFSKY:

There is no one indicated to the witness as to who that representative is.

MR. MOSCOVITZ:

I will indicate it.

BY MR. MOSCOVITZ:

Q. Did you ever confer with Mr. Posner, who is alleged to have been at that time the representative of these girls?

MR. GIROFSKY:

And I object to this question. This is re-direct examination, if Your Honor please. Counsel has had an opportunity to take up all these matters on direct. Now, he is laying the foundation here for neutralizing the testimony that his witness has already given.

MR. MOSCOVITZ:

Of course, on direct examination I did not touch the question of Unions as such, nor the matter of re-instatement of these girls. On cross examination Mr. Girofsky raised the question by asking Mr. Fainblatt whether or not the Union question was involved in the laying off or discharge of these girls and whether they made any application for re-instatement, so it seems to me quite proper to take it up now.

TRIAL EXAMINER GATES:

The question is pertinent to the issues involved here, and I think Mr. Fainblatt may answer.

MR. GIROFSKY:

I take an exception.

BY MR. MOSCOVITZ:

Q. Did you ever confer with Mr. Posner regarding the return of these girls.

A. No.

Q. After these girls went out on strike, did you ever meet with Mr. Posner for the purpose of settling the dispute?

A. Mr. Posner did meet with us.

Q. Did Mr. Posner tell you he represented these girls for the purpose of collective bargaining?

MR. GIROFSKY:

I object to what Mr. Posner told him, as far

as these girls are concerned, or his representative capacity. It is a self-serving declaration.

TRIAL EXAMINER GATES:

Certainly it is self-serving, but you have to make some statement as to it.

MR. GIROFSKY:

Mr. Posner is here This witness is Mr. Moscovitz' own witness. He is affecting the credibility of his own witness. If he wants to stand on the record that way, he may.

MR. MOSCOVITZ:

I am going after further facts. I am not affecting his credibility.

MR. GIROFSKY:

There is a proper way of going after those facts.

TRIAL EXAMINER GATES:

I think the question may be answered, although I think that the general position that you are taking is correct.

MR. MOSCOVITZ:

Then I will withdraw the question.

BY MR. MOSCOVITZ:

Q. You say you did confer with Mr. Posner; is that right?

A. Yes, we did.

Q. And the question of the re-instatement of these girls was raised, wasn't it?

A. Not exactly.

Q. Well, what do you mean, not exactly?

A. If I remember well, we happen to have a little meeting.

Q. Yes. But what was the question brought up

Was the question of the re-instatement of these girls involved?

A. No, it was not.

Q. Was the question of the settlement of the dispute, the strike, involved?

A. Yes.

Q. And wasn't it part of that settlement, the taking back as a group, of these girls who went out on strike?

A. No, sir.

Q. And—

A. If I remember correctly, it was not.

Q. To get back to the girls who went out on strike, it was not involved in the settlement of this dispute?

A. It was not, to my recollection. It was not mentioned that he wanted me to take the girls back, to my best recollection.

Q. Do you mean to convey to me the understanding that the strike was to be settled without these girls being taken back?

A. I don't remember correctly what the conversation was and what the argument was. As I said before, I don't remember.

Q. Did you tell Mr. Posner that you would not enter into an agreement with the Union?

A. I don't remember that.

Q. Did you tell Mr. Posner that you would never recognize a Union for collective bargaining?

A. I don't remember that.

Q. Did you tell Mr. Posner that you would spend your last dime and deprive yourself of your business before you would recognize a Union for purpose of collective bargaining as representative of your girls?

A. I do remember—I did say that in general, that before I will have an outsider running my business, I will get out of it and I will call it quits.

Q. That you would not recognize the Union?

A. Union or anybody else, that I couldn't run my own business without outside interference; I am out of it. I am through.

Q. So it is clear, isn't it, that so far as the Union is concerned—

A. Union or association or organization, or fraternity, I am not—

Q. You will not deal with them?

A. I will not allow an outsider to run my business.

Q. You will not deal with them?

A. I will not let an outsider run my business.

Q. You will not deal with them?

A. I will not let an outsider run my business.

MR. GIROFSKY:

I insist on Mr. Moscovitz making a proper examination of his witness. There is no need for him arguing with him. The answer has been given.

TRIAL EXAMINER GATES:

I don't think that any of the answers have been quite responsive on this one question.

Will you repeat the question, please, Miss Sills, and will the witness please answer directly?

(Question read.)

BY MR. MOSCOVITZ:

Q. The question is you will not deal with the Union as representative of your employees—yes or no?

MR. GIROFSKY:

I object to this question. It is not a question of what Mr. Fainblatt will do now, it is a question of what he would have done at the time of the strike or prior to the strike.

MR. MOSCOVITZ:

We will make it back there then.

BY MR. MOSCOVITZ:

Q. You would not then deal with the Union as representative of the girls for purposes of collective bargaining; is that right?

MR. GIROFSKY:

There is no testimony here that the Union is representative of the girls. It is a conclusion in Mr. Moscovitz' own mind.

MR. MOSCOVITZ:

You lose sight of the fact that there were questions preceding this one where Mr. Fainblatt said he did meet with Mr. Posner. All I want to know is whether or not at that time it was his position that he would not deal with Mr. Posner as a union representative of these girls. It is very simple for him to say yes or no.

MR. GIROFSKY:

What girls?

MR. MOSCOVITZ:

Well, let's not be facetious.

MR. GIROFSKY:

I think it is material to this issue that Mr. Moscovitz state and prove that who among the girls Mr. Posner and the Union represented.

TRIAL EXAMINER GATES:

I agree entirely. Certainly he would have to before the proceeding is over, but I don't think

it is necessary that that proof be put in before he answers the question.

MR. MOSCOVITZ:

Didn't you bring the mayor of this town into your factory and have him face them, and didn't he tell them they did not have to belong to a Union?

A. I did not.

MR. GIROFSKY:

I object to this. What materiality has the mayor to this? Mr. Moscovitz seems to be floundering here, jumping from one thing to another.

TRIAL EXAMINER GATES:

Answer the question.

A. I said I did not.

BY MR. MOSCOVITZ:

Q. Didn't you bring the sheriff of this county in before they went out on strike and have him say they need not belong to a Union?

A. He did not. I did not.

TRIAL EXAMINER GATES:

Objection overruled.

MR. GIROFSKY:

Exception.

TRIAL EXAMINER GATES:

You may have an exception.

BY MR. MOSCOVITZ:

Q. How about the chief of police?

MR. GIROFSKY:

I object to that.

MR. MOSCOVITZ:

I withdraw that.

BY MR. MOSCOVITZ:

Q. Didn't you bring Mr. Hawley in before the

girls went out on strike and didn't he say at that time—

MR. GIROFSKY:

I object. Just a moment.

MR. MOSCOVITZ:

I didn't finish my question.

BY MR. MOSCOVITZ:

Q. And didn't he at that time say that the girls need not belong to the Union?

MR. GIROFSKY:

I object. This man is Mr. Moscovitz' own witness and these questions are leading questions, and they also tend to affect the credibility of this witness. And I want to ask for the record whether Mr. Moscovitz is trying to impeach the testimony or neutralize the testimony of his own witness.

MR. MOSCOVITZ:

Of course, I understand we are not bound by legal rules of evidence in this proceeding. I want to bring out the facts.

MR. GIROFSKY:

Then, this is not a court?

MR. MOSCOVITZ:

The question is before the Examiner.

MR. GIROFSKY:

Anything goes I take it.

MR. MOSCOVITZ:

It seems so in Somerville.

MR. GIROFSKY:

Also before the National Labor Relations Board.

TRIAL EXAMINER GATES:

What is the question?

(Question read to the witness.)

A. He did not say it.

BY MR. MOSCOVITZ:

Q. Before the girls went out on strike, did the Mayor meet with them in your presence, in your plant?

A. Yes.

Q. Before the girls went out on strike did the sheriff of this county meet with you and the girls in your plant?

A. Yes.

Q. Before the girls went out on strike did Mr. Hawley of this city meet with the girls in your plant?

A. Not at that time, no.

Q. Did he at any time?

A. Yes.

Q. All right. On whose invitation?

A. At my invitation.

Q. Did the mayor attend this meeting?

A. At my invitation.

Q. At whose invitation did the sheriff attend this meeting?

A. Mine.

Q. And at whose invitation did Mr. Hawley attend this meeting?

A. At my invitation.

Q. And was a discussion at the time of the meetings in reference to the Union?

A. No, sir.

Q. Was the discussion at the time as to whether or not these girls should join a Union?

A. No, sir.

Q. As to whether or not they should leave the Union?

A. No, sir.

Q. Was the question of Unionism discussed at all?

A. No, sir.

Q. What was the purpose of the meeting?

A. The purpose of the meeting was that we had a little revolution and in place to revolize, we asked them not to make a false step, as I remember well, pardon me, not to make trouble for a peaceful factory which they are making a living there and so forth, but they did not make mention of any Union whatsoever, neither of them.

Q. What revolution? The revolution of the girls joining a union?

A. No, sir.

Q. What revolution?

A. That they are not satisfied with the business there and they are going to go out, they are going to quit work.

MR. GIROFSKY:

Did you mean revolution or a rumor?

A. Rumor, that is what I heard.

BY MR. MOSCOVITZ:

Q. A rumor that the girls were going to go out on strike?

A. Yes.

Q. You heard that?

A. Yes.

Q. Did you know at the time that they belonged to the Union?

A. No, sir.

Q. Did you know it at the time that they met with Mr. Posner?

A. No, sir.

Q. Did you know there was going to be, that

there had been two or three meetings of the Union?

A. No, sir.

Q. Well, how did you know there was going to be a strike?

A. From the girls.

Q. What girls?

A. In the plant.

Q. Then you did know the girls in the plant belonged to the Union?

A. None of them belonged to the Union at that time and I don't think they do today.

Q. How did you know, where did you get your information?

A. I have a right to think, haven't I?

Q. Then you did inquire into the question of whether or not they belonged to a Union?

A. I did not inquire.

Q. But you know—you knew?

A. I knew, yes.

Q. So that when these three gentlemen that we have been referring to met at your invitation with these girls, they met there to discuss the question of the rumored strike?

A. I presume so.

Q. Were you in attendance at the meetings?

A. I was at the meeting, sure, what do you mean, when the gentlemen were addressing them? Sure.

Q. You invited them?

A. I did invite them, yes.

Q. What did the mayor say?

MR. GIROFSKY:

I object to what the mayor said. The mayor's statements at this discussion are immaterial and not binding upon this respondent in this cause. The mayor himself is the best evidence.

MR. MOSCOVITZ:

I will withdraw my question.

BY MR. MOSCOVITZ:

Q. Mr. Fainblatt, before you came to Somerville, you testified that you were associated with Lee Sportswear Company?

A. Yes.

Q. And you also testified that you were associated with them in a supervisory capacity?

A. Yes.

Q. Now, what was that capacity?

A. In the manufacturing field.

Q. But were you boss?

A. No.

Q. Just what were you, an ordinary employee?

A. Yes.

Q. Working on a salary?

A. Yes.

Q. Did you act at all for the firm?

A. Yes.

Q. In what way?

A. Taking care of the department.

Q. What department did you take care of?

A. The manufacturing clothing.

Q. You were in charge of it?

A. Yes.

Q. What would you be called? A foreman, or an ordinary employee?

A. General supervisor.

Q. And that was the only association?

A. Yes.

Q. Did you have any money in the company at that time?

A. No.

Q. Did you ever represent the firm in any proceedings before any arbitration board?

A. Yes.

Q. And did you in those proceedings speak for the firm?

A. Yes.

Q. Under what authority?

A. Under the firm's authority.

Q. Under the firm's authority? They gave you what sort of authority?

A. Full authority.

Q. And were you their representative in all arbitration matters?

A. Yes.

Q. You were to act for them?

A. Yes.

Q. And they would assume as their agent whatever you did?

A. Yes.

TRIAL EXAMINER GATES:

What sort of arbitration did he have reference to?

A. Three years ago we had a factory inside, what we called it, twenty odd people were working in there.

TRIAL EXAMINER GATES:

You mean arbitration matters with the Unions? You ran an inside shop?

THE WITNESS:

Yes.

BY MR. MOSCOVITZ:

Q. You came here in 1934?

A. Yes.

Q. Do you remember the month?

A. August.

Q. And immediately before coming here, were you involved in an arbitration matter in New York?

A. This is the arbitration that you asked me.

Q. Yes. And that was before the Impartial Chairman?

A. Dr. Moskowitz.

Q. What was the question before him at that time?

MR. GIROFSKY:

I object to this question, Your Honor. It is immaterial about these arbitration labor disputes of Lee Sportswear prior to the date that we are concerned with in the proceeding. It was some time before he ever came to Somerville.

TRIAL EXAMINER GATES:

The witness may answer.

MR. GIROFSKY:

Exception.

BY MR. MOSCOVITZ:

Q. What was the question before the Impartial Chairman?

A. The question was we had been starting to manufacture, or the firm of Lee Sportswear, started to manufacture a line of merchandise whereas those employees were not experienced and consequently they could not see their way clear to manufacture this class of merchandise inside.

Q. That is the Lee Sportswear?

A. Lee Sportswear. I am speaking about that and the representative of those employees insisted upon Lee Sportswear manufacturing this class of merchandise, even under a loss, which it had to go before the arbitrator, whatever you call him, Dr. Moscovitz.

Q. That is the same kind of work you are doing in Somerville today?

A. Yes. This is the goods. And, of course, after a time it was fading out and they gave up their factory.

Q. You were decided against in that case?

A. No, I was not.

Q. Can you tell me what the decision was in that case, if you remember?

MR. GIROFSKY:

I object to this question. It is immaterial what the decision was in any other proceeding. It has no relation whatever.

TRIAL EXAMINER GATES:

I think it assists in giving the general picture.

MR. GIROFSKY:

Exception.

A. The decision was that they could not manufacture under their own supervision this line of work.

Q. The line of work that you are manufacturing here?

A. That they had been manufacturing at that time there.

Q. Prior to this decision—

A. Yes.

Q. By the Impartial Chairman, before whom you appeared for Lee Sportswear, you moved to Somerville, you came to Somerville?

A. They put me in business, they opened a factory for me, they let me open a factory.

Q. Oh, they put you in business?

A. Yes.

Q. Then, after they put you in business in Somerville,

ville, you manufactured the type of thing you were forbidden to manufacture in New York?

A. Yes.

Recross Examination

BY MR. GIROFSKY:

Q. You went into that business with your own capital?

A. Yes.

Q. You assumed all financial obligations and responsibilities in running this business in Somerville?

A. Yes.

Q. And that is solely a manufacturing business, is that right?

A. Yes.

Q. When Mr. Posner came to you, he insisted he wouldn't talk re-employment of these girls, or wages, or hours, or other working conditions unless you first signed a contract making your shop a closed Union shop? Is that right?

A. Yes, that is the truth.

Q. And he would not concern himself about the employment of these six girls named in the complaint, and all others who walked out, unless you had a closed shop contract with him?

A. Exactly.

Q. You stated to Mr. Moscovitz in his examination that Lee Sportswear put you in business. They loaned you money, didn't they?

A. Plenty, too.

Q. And all the equipment in this plant at Somerville, the only plant you operate, is owned by you. Is that right?

A. Yes.

Q. And you, yourself, gave them security for any advances or loans. Is that right?

A. Yes.

Q. What was the form of that security?

A. I gave him a chattel mortgage on my machinery.

Q. And you owed them the money once it was advanced?

A. Yes.

Q. Have you paid any of it back?

A. Very little, so far.

Q. Did you pay any of the money back?

A. Some, not all.

Q. And your obligations then are still open?

A. Yes, still open.

Q. And you worked for Lee Sportswear over in New York on a salary?

A. Yes.

Q. You were not the owner of a plant?

A. No, sir.

Q. You went into business for yourself when they were stopped from manufacturing by themselves?

A. Exactly.

Q. Then you went into business for yourself?

A. That's right.

Q. At Somerville?

A. That's right.

Q. Do you file a personal income tax return?

A. Yes.

Q. Do you include in that personal income tax return your income from manufacturing here?

A. Yes.

Q. And does the Lee Sportswear, to your knowl-

edge, include in their income tax return any income from the Somerville Manufacturing Company?

A. They haven't got no income from the Somerville Manufacturing Company.

Q. And now, Mr. Fainblatt, are you willing to re-employ these girls, if there is no insistence that your shop be a closed Union shop?

A. I will answer that question in a different way.

Q. Are you willing?

A. I am willing to employ each and every one of them if they come in peacefully.

Q. Have you always been willing to do that?

A. I am always willing to employ any peaceful worker.

Q. Have they ever applied for re-employment?

A. They have never applied since they came out.

BY MR. MOSCOVITZ:

Q. Will you employ these girls if they come in peacefully?

TRIAL EXAMINER GATES:

He has not finished his examination.

MR. MOSCOVITZ:

I thought he said he was finished. I am sorry.

BY MR. GIROFSKY:

Q. You would not insist as a condition of re-employing these girls that the shop be unionized, is that so?

A. I will employ any employee—

MR. MOSCOVITZ:

There is no question before you.

MR. GIROFSKY:

Withdraw the question. That is all.

BY MR. MOSCOVITZ:

Q. Will you re-employ these girls, Mr. Fainblatt,

to whom you have been referring if they come back peacefully?

A. I will employ any peaceful worker who applies for work, if I have room for them.

Q. Then you would take these girls back if they came back peacefully, and you had work for them?

A. As individuals.

Q. But not as a union?

A. Not as a body; I don't speak about unions. I don't know about union business. I know a body.

Q. You mean you will take one but you won't take two?

A. I may take twenty out of them.

Q. If you take twenty, it is a body?

A. As individuals.

Q. Will you take twenty on the same day?

A. No, sir, because I ain't got room for them.

Q. But if you had room for them?

A. I will take twenty one the same day if I had room for them.

Q. But that would be a body?

A. You and this gentleman and this gentleman can come and apply for work and if I have room I will hire you and if I have not got room I won't hire you. I may hire in one day twenty people and the next day not one person.

Q. That is so long as they don't belong to a union?

A. They can belong to any organization they feel like. It is their personal privilege. I have not got anything against any of my employees if they join an organization or association or any kind of fraternity, that is their personal privilege, but if any outsider will come and want to run my business, inside, I will not concede to it.

Q. Do you mean then that you have no objection to their belonging to an association or outside organization so long as it does not become necessary then for you to deal with this organization as the representative of your workers?

A. As long as this organization don't want to run my business.

Q. That is not the question.

A. That is the only answer I can give you.

Q. It seems to me it is clear enough.

A. As long as this organization does not run my business. It is their personal privilege to belong to any organization.

Q. There is no question before you.

(Witness excused.)

TRIAL EXAMINER GATES:

We will recess for five minutes.

After Recess

TRIAL EXAMINER GATES:

Is counsel ready?

HARRY A. POSNER, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination

BY MR. MOSCOVITZ:

Q. What is your full name?

A. Harry A. Posner.

Q. What is your address?

A. My home address?

Q. Yes.

A. 607 East Second Street, Plainfield, New Jersey.

Q. What is your business?

A. Manager of Local No. 149, International Ladies Garment Workers Union.

Q. Are you a representative of the International Ladies Garment Workers Union?

A. Yes.

Q. What is the Local to which you have just referred?

A. This is a branch of the parent body.

Q. Where is it located?

A. 3 West 16th Street, New York.

Q. As representative of the International, have you had occasion to act in Somerville?

A. I did.

Q. In regard to what company?

A. In regard to the Somerville Manufacturing Company and Somerset Manufacturing Company.

Q. That is the respondent in this case?

A. That's right.

Q. How did you happen to come to Somerville?

A. Well, on or about August 14th—

Q. 1935?

A. 1935—three of the workers of the Somerville Manufacturing Company came to my office—

MR. GIROFSKY:

I object to any conversation this witness might have had with anyone other than the respondent for the purposes of this question.

TRIAL EXAMINER GATES:

Well, I don't think he has testified to any yet, but I would be inclined to let it in.

MR. MOSCOVITZ:

I don't intend that this explanation which Mr. Girofsky anticipates that Mr. Posner will give is to be binding on Mr. Fainblatt. It is simply explanatory on how he came here. I don't know yet what Mr. Posner is going to say.

BY MR. MOSCOVITZ:

Q. You say three girls came to you on August 14th?

A. Yes.

Q. What were their names?

A. Mary Morano, Ethel Rice and Anna Santora.

Q. What did they come to you for?

A. They came to me and asked me if I could put them—

MR. GIROFSKY:

I object to any conversation this witness had with these girls. It is hearsay. It is not in the presence of respondent.

TRIAL EXAMINER GATES:

The witness may answer.

MR. MOSCOVITZ:

It is certainly in the presence of Mr. Posner. I don't expect that this testimony is to be binding upon Mr. Fainblatt. I simply wanted it as an explanation how he came to Somerville.

MR. GIROFSKY:

It is entirely improper. I don't think it is fair for it to go into the record. Your Honor, You have the right to rule on it.

TRIAL EXAMINER GATES:

I have already ruled that it may go in.

BY MR. MOSCOVITZ:

Q. Did you give the names of the girls that came to see you?

A. Yes.

Q. Did they make any request of you?

A. Yes.

Q. What was the request?

A. They requested me to assist them in improving their conditions in the factory there.

Q. Now, as a result of this request, this one conversation, did you then come to Somerville?

A. No, I did not.

Q. What took place then?

A. I was too busy at that time and I told them to go back to the factory and—

MR. GIROFSKY:

I object, Your Honor, for the same reason.

TRIAL EXAMINER GATES:

It can be understood that you are objecting to this whole line of questioning and that the same ruling applies, if you wish.

MR. GIROFSKY:

Exception.

BY MR. MOSCOVITZ:

Q. Will you proceed?

A. I was too busy at that time to come out to Somerville. I instructed these girls to go back to the shop and speak to the rest of the workers. If they could get enough of the workers interested to attend a meeting, that they should let me know and I would come out and have a meeting with them and find out further details about their conditions in the shop.

Q. Did they do that?

A. Well—

Q. Just yes, or no.

A. Yes they did.

Q. Did they then communicate with you further?

A. They did.

Q. When, do you remember?

A. On the 19th.

MR. GIROFSKY:

I object to all this line of testimony as to any conversations or the conduct of these girls.

BY MR MOSCOVITZ:

Q. Will you answer my question?

A. They communicated with me and I arranged a meeting for the 21st of August in Raritan.

Q. Did you then attend that meeting?

A. I did.

Q. Were the employees of this company there, certain of them?

A. Yes.

Q. That was the first meeting you had with them?

A. Yes.

Q. Do you know how many were there?

A. Approximately twenty-five.

Q. Did any of the employees at that time join your union?

A. Mostly all of them did.

Q. At that time?

A. At that meeting, yes.

Q. And did you have any—

TRIAL EXAMINER GATES:

I would rather counsel be a little more specific.

BY MR. MOSCOVITZ:

Q. Did any of the employees who attended the first meeting make application for membership in

the International Ladies Garment Workers Union?

A. They all did.

Q. Was it an application as such or was there any dues paid, or what was the proceeding?

A. No dues paid at the time. They just filled out the application blanks showing their willingness to become members.

Q. You say that they all did. Do you know approximately how many did?

A. About twenty-two.

Q. And what was your next meeting, if you did have a next meeting?

A. It was on the 28th of August.

Q. What was the attendance at that meeting?

A. About thirty-five.

Q. All employees of the company?

A. All employees of the above mentioned firm.

MR. GIROFSKY:

I object to this. There is no testimony to show that this man is in a position to know whether or not they were employees.

MR. MOSCOVITZ:

We will connect that up.

TRIAL EXAMINER GATES:

He may answer.

MR. GIROFSKY:

Exception.

BY MR. MOSCOVITZ:

Q. Did you get any additional applications at that time?

A. I did.

Q. How many do you recall?

A. About ten.

Q. Which gave you a membership of approximately how many at that time?

A. Thirty-five.

Q. And did you have any other meetings before the date of the strike?

A. I did.

Q. That is, before September 18th, 1935?

A. Yes.

Q. How many more meetings before the day of the strike?

A. I had one on October 5th, one—

Q. I am talking about before the day of the strike.

A. I had a meeting on the 17th.

Q. Of September?

A. Yes.

Q. Were there any additional applications at that time?

A. Yes.

Q. How many?

A. About forty-three.

Q. Additional or does that make your total forty-three?

A. That makes my total forty-three.

Q. Do you have the application of those who signified their desire to be represented by the International at that time?

A. I have.

Q. With you?

A. Yes.

Q. May I see them?

A. They are in my bag, if you will permit me to get them.

Q. Do you have them now?

A. Yes.

Q. Do you now have before you the applications of those who signified intention to be represented by

you; or by the International before the day of the strike?

A. Yes.

Q. And in whose signatures are these cards?

A. The signatures of the workers, of the applicants.

Q. Are the dates on the cards?

A. Yes.

Q. May I see them? These are the signatures of the applicants?

A. Yes.

MR. MOSCOVITZ:

I offer those in evidence, Your Honor.

MR. GIROFSKY:

I would like to check them before we go any further. Do you wish to proceed momentarily and allow me to check these?

BY MR. MOSCOVITZ:

Q. At first did you discuss with the applicants the question of representation before Mr. Fainblatt for the purposes of collective bargaining?

A. I did.

Q. And when was the first time that you met with Mr. Fainblatt for this purpose?

A. It was about two days after the second meeting. I believe it was the thirtieth of August.

Q. And where did you meet Mr. Fainblatt, or how did you get in touch with him?

A. I called upon Mr. Fainblatt on the premises of his plant.

Q. And did you meet with him?

A. I met with him.

Q. What took place at that time?

A. I told Mr. Fainblatt that I had met with the workers of his shop.

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MR. GIROFSKY:

Is counsel intending to neutralize the testimony of Mr. Fainblatt, his witness? If so, I should like to know in order to further my objection to this question.

MR. MOSCOVITZ:

I am not neutralizing any testimony of Mr. Fainblatt. There is no testimony of Mr. Fainblatt regarding any conversations with Mr. Posner at this time.

MR. GIROFSKY:

Counsel has asked Mr. Fainblatt questions on this matter.

MR. MOSCOVITZ:

I didn't specifically refer to these particular meetings.

TRIAL EXAMINER GATES:

I think we ought to get as much as possible into the record.

MR. MOSCOVITZ:

I have not asked anything yet which seems to me to go to the neutralization of testimony. I would say the objection is a little premature.

TRIAL EXAMINER GATES:

Are you raising an objection to that one question?

MR. GIROFSKY:

I withdraw the objection for the moment.

BY MR. MOSCOVITZ:

Q. What took place at that meeting?

A. I called on Mr. Fainblatt about five thirty in the afternoon and I told him that I have several meetings with his workers and that we had discussed the conditions in the shop and that they had delegated me to present Mr. Fainblatt with demands

improving their conditions, which I did, and Mr. Fainblatt listened to me very carefully and told me that he would take these demands into consideration, and he would let me know in a few days.

Q. Is that all that took place at that meeting?

A. That is all that took place at that time.

Q. You submitted a proposal?

A. I submitted a proposal of demands to him.

Q. As a basis for negotiation?

A. Yes.

Q. Did Mr. Fainblatt get in touch with you thereafter?

A. He did not.

Q. What did you do, if anything? Did you get in touch with Mr. Fainblatt for the second time?

A. I got in touch with Mr. Fainblatt for the second time. I believe it was on the 6th of October—6th of September, rather, and I asked him whether he had any answer for me, and he told me that he will have no dealings with me and he will not have anything to do with a union and that he does not recognize me as the legal representative of the workers.

Q. And then did you call on Mr. Fainblatt?

A. Shortly after that we had another meeting and I reported it.

Q. You mean you and Mr. Fainblatt?

A. No, with the workers.

Q. I see.

A. And I reported to the workers that Mr. Fainblatt has refused to negotiate with us.

Q. Was this before the strike?

A. Yes, before the strike.

Q. Go on.

A. And we discussed that matter and we decided to take the matter to a vote whether they should de-

clare a strike or not and everybody voted in favor of the strike. The strike was set for September 18th at ten o'clock in the morning.

Q. Did you then arrange to meet with Mr. Fainblatt again before the strike?

A. No, I did not.

Q. Did you get in touch with Mr. Fainblatt?

A. I did not.

Q. Then what happened?

A. I accepted his answer as final, that he would have no further negotiations with me and I thought the only thing to do was to have a strike.

Q. Did you discuss this with your members, with your membership?

A. I did.

Q. Were they in touch with your proceedings as you went along?

A. They were.

Q. Did you discuss pro and con the advisability of the various things you were doing?

A. I did. As a matter of fact I tried to advise them against the strike and told them there might be a possibility of getting together with Mr. Fainblatt, but they just wouldn't wait any longer. They said they had been fooled once too often, and they were not going to wait any longer.

MR. GIROFSKY:

I object to these statements. Of course, if counsel wishes to state for the record that these statements are not binding on Mr. Fainblatt—he has already stated that any conversations not in the presence of Mr. Fainblatt are not binding upon Mr. Fainblatt.

MR. MOSCOVITZ:

Oh, my earlier reference was to the manner in

which Mr. Posner came to Somerville. The question has been answered. I did not know you were interposing an objection.

MR. GIROFSKY:

I ask that it be stricken, Your Honor.

TRIAL EXAMINER GATES:

You understand that all this record will have to be sifted and we will let it stand.

MR. GIROFSKY:

Take an exception.

BY MR. MOSCOVITZ:

Q. How many people went out on strike that were members of your union employed by the company on September 18th, Mr. Posner?

A. On the first day of the strike I had forty-three people who all signed up.

Q. What was the date?

A. September 18th.

MR. GIROFSKY:

That is not responsive.

BY MR. MOSCOVITZ:

Q. How many people went out on strike the first day of the strike?

MR. GIROFSKY:

If he knows, Your Honor.

A. About twenty-eight. I can't tell you exactly because I have no records of it.

MR. GIROFSKY:

You have no records?

A. Not with me.

BY MR. MOSCOVITZ:

Q. Approximately how many?

A. About twenty-eight walked out on the day of the strike.

Q. On that day, what was your union membership?

A. Forty-three.

Q. And did any other employees, members of your union, join the strike subsequently?

A. Yes.

Q. How many more?

A. About twelve or thirteen.

Q. And do you know when that was?

A. That was on the day of the strike.

Q. When was it that the additional employees went out on strike?

A. You mean those in addition to those who walked out?

Q. If I understand your testimony correctly, a certain number went out on the day of the strike, twenty some odd?

A. Yes.

Q. Now, in addition to that number, how many went out?

A. About thirteen.

Q. Over what period of days?

A. On the same day.

Q. So how many went out—

A. I want to explain this.

Q. Please do.

A. On the day of the strike, twenty-eight people walked out of the shop. There were about twelve or thirteen who were either discharged prior to the strike or who had quit before the strike themselves, and that made a total of about forty-three on the day of the strike.

Q. So, you are including in the twenty some odd who went out on the day of the strike, those who were discharged before the strike?

A. That's right.

Q. Is that right?

A. That's right.

TRIAL EXAMINER GATES:

You are including in this number of twenty-eight, some who were not at work on that date?

A. No, no. Those twenty-eight came out of the shop. They were working that day but in addition to those twenty-eight, there were thirteen or maybe fifteen who were citizens of the shop.

Q. Let me get this straight. There was a strike September 18th?

A. That's right.

Q. How many Union members went on strike on that day?

A. You mean, how many were on strike that day? Forty-three.

Q. How many physically walked out that day?

A. About twenty-eight.

Q. So that the balance were people who had been discharged before September 18th?

A. That's right.

Q. Now, after the strike, did you confer further with Mr. Fainblatt?

A. Not directly with Mr. Fainblatt but with Mr. Girofsky, his representative.

Q. When was that?

A. That was about ten days or two weeks after the strike was called.

Q. Did you go to see him or call him up?

A. Yes, I went to his office accompanied by one of the strikers.

Q. For what purpose?

A. To see if we can't come to some understanding and settle our dispute in a peaceful way.

BY MR. GIROFSKY:

Q. You swore to a complaint under oath with the National Labor Relations Board as to Fay Katz, didn't you?

A. I did.

Q. And you swore to tell the truth here today?

A. I did.

Q. Now, if your testimony here today stating that Fay Katz was in the employ of the company on September 18th is true or not true—

A. It is true.

MR. MOSCOVITZ:

The witness has not testified.

MR. GIROFSKY:

It has been answered.

BY MR. GIROFSKY:

Q. Then it was untrue, as we understand, when you signed under oath with the National Labor Relations Board, isn't that so?

A. It is not untrue. I considered her to be a member—

MR. GIROFSKY:

Will you instruct the witness to wait until the question is finished, before he answers?

BY MR. GIROFSKY:

Q. Didn't you, showing you a copy of the charge, didn't you say under oath before Evelyn B. Smith, a Notary Public for New Jersey, on October 14th, 1935: "On or about September 12th, 1935, the respondent discharged the following persons:" and you named Fay Katz, and you signed as the manager of the Local Union No. 149 of the International Ladies Garment Workers Union?

A. That's right.

Q. Is that right?

A. Yes.

Q. Then your testimony here today or this affidavit, one or the other, is wrong, isn't that right?

A. No, I cannot see your point. The reason I consider this worker still attached to the shop is because I contend that she was discharged for her activities for trying to help form a union in that shop, and I consider her as one of the workers in that shop.

Q. That is your answer?

A. Yes.

Q. Now, Tessie Barone, was she employed by the respondent companies on September 18, 1935?

A. I don't know much about Tessie Barone as a matter of fact. I don't know these members personally. I only know them by sight. I can't give you the history of each and every one of them. All I know is they were in the employ of the Somerville Manufacturing Company, either on the day of the strike or reasonably prior to the day of the strike.

Q. What is reasonably prior to the day of the strike?

A. Three or four or five weeks.

Q. And if it is five weeks and one day, is that reasonable?

A. Yes, it would be reasonable.

Q. And suppose it would be six weeks, would that be reasonable?

A. It would depend on the circumstances.

Q. What circumstances?

A. If you will permit me to explain, I will give you my version of it. If an employee was forced to quit her job because the employer gave her a cut without consulting her, and without her approval, if by force of economic circumstances she was compelled to leave her job and look for something better

Q. Did you confer with Mr. Girofsky?

A. I did.

Q. Was Mr. Girofsky acting as representative of the company at that time?

A. He was.

Q. Was the matter adjusted?

A. It was not.

Q. And after that did you get in touch with Mr. Fainblatt?

A. No, I didn't speak to Mr. Fainblatt.

Q. That severed further negotiations?

A. That severed further negotiations.

Q. The matter was then submitted to the National Labor Relations Board in a formal charge?

A. That's right.

Q. That is all.

Cross Examination

BY MR. GIROFSKY:

Q. When was it you came to my office, Mr. Posner?

A. I believe it was ten days or two weeks after the strike was called.

Q. Did I invite you to my office?

A. No, you did not.

Q. Who were with you?

A. Mr. Frank Ross.

Q. Ross was not in the employ of Mr. Fainblatt, Somerville or Somerset Manufacturing Company on September 18th, 1935, was he?

A. No, he was not working at that time.

Q. He had not been working for many weeks prior to that time, isn't that so?

A. That's right.

Q. In fact, he was completely out of the employ of the two companies?

A. He was.

Q. He quit voluntarily, of his own accord; is that right?

A. Yes, from what I understand.

Q. And you consider Frank Ross as one of those members in the Union?

A. I do.

Q. And did you consider Frank Ross an employee of the company for the purpose of collective bargaining?

A. I did.

MR. MOSCOVITZ:

Well, Mr. Girofsky—he is not involved.

MR. GIROFSKY:

Why is he not involved? You offered the card.

MR. MOSCOVITZ:

Perfectly agreeable.

BY MR. GIROFSKY:

Q. That cuts your total down from forty-eight to forty-seven, doesn't it?

A. I said forty-three.

Q. It cuts it down from forty-three to forty-two?

A. To forty-two.

Q. Now, are there any other girls—now, was Mary Dentko in the employ of the respondent companies on September 18th, 1935?

A. I couldn't say off hand, I can't remember each one.

MR. MOSCOVITZ:

I object on the ground that that is immaterial.

He can see the cards, I imagine. I offered them. The question is whether or not they were employed on that date or discharged before.

TRIAL EXAMINER GATES:

Are you raising an objection?

MR. MOSCOVITZ:

I object.

BY MR. GIROFSKY:

Q. I don't—you don't know?

A. No. I don't know.

Q. You don't know and you did not know at the time, did you, whether she was employed by the respondent?

A. From what I understand she was one of the employees.

Q. You don't know of your own knowledge?

A. No, I don't know.

Q. How about Sylvia Milano? Was she employed September 18th, 1935?

A. No, she was not.

Q. You don't know how long before September 18th she was working there?

A. Not of my own knowledge.

Q. And yet you considered Mary Denko and Sylvia Milano employees for the purpose of collective bargaining, your representation?

A. Yes, they are—

Q. Theresa Yemma, was she, to your knowledge, in the employ of the respondent companies on September 18th, 1935?

A. I believe she was in the employ up to approximately the 16th of that month, but not up to the 18th.

Q. Do you know?

A. I know she was in the employ.

Q. How do you know?

A. From personal contact with the workers.

Q. Did you see her in the plant?

A. No, I did not.

Q. Did you see her going to and from the plant?

A. I did not.

Q. Then how do you know?

A. From what she told me.

Q. Now, Mayme Ross, was she in the employ of the respondent companies at the date of September 18th?

A. Not on the day of the strike.

Q. She was not?

A. Not on September 18th.

Q. How long before?

A. Four weeks before.

Q. Yet you included her in this group for collective bargaining purposes?

A. I did.

Q. Mary Gecik, was she in the employ of the companies on September 18, 1935?

A. She was not at work on that date, no.

Q. She was not?

A. No.

Q. Was she an employee on that date?

A. She was on August 21st, she was an employee of that shop and that was the day of the first meeting.

Q. But you don't know whether she was on September 18th, do you?

A. If she was,—

Q. You don't know, do you?

A. No, I don't know.

Q. And yet you included her in your group?

A. Yes.

Q. For collective bargaining purposes?

A. Yes.

Q. Fay Katz, was she in the employ of the companies on September 18th, 1935?

A. She was not working on that day, no.

Q. Was she in the employ?

A. I can't say whether she was or not because she had been in the employ up to the time of the strike.

Q. You don't know whether she was in the employ or not?

MR. MOSCOVITZ:

He answered the question that she was not working that day.

BY MR. GIROFSKY:

Q. You don't know whether she was employed or not on that day, do you?

A. No, I know she was not employed on that day.

Q. Well, did she say she was in the employ and off temporarily?

MR. MOSCOVITZ:

Mr. Examiner, if I may object at this point, Mr. Girofsky is going through a list of names, some of whom as he knows are included in the complaint as alleged to have been discharged.

MR. GIROFSKY:

I think this is unfair. I don't want the witness to hear this.

MR. MOSCOVITZ:

I am going to bring these people on the stand, Mr. Girofsky. Those three girls, are persons we—

BY MR. GIROFSKY:

Q. You don't know whether Fay Katz was in the employ or not on that day?

A. Not on the day of September 18th, but I do know she was in their employ shortly prior to the time of the strike.

Q. And she was still to your knowledge on the day of the strike in the employ?

A. That's right.

Q. That is your knowledge at the present time?

A. Yes.

Q. Then why did you sign a complaint with the National Labor Relations Board stating that she had been discharged prior to the strike?

A. She was discharged prior to the strike.

Q. That is your answer?

A. Yes.

Q. Why did you tell me a moment ago she was continued in the employ at the time of the strike?

A. She was employed, I said, on the day of the strike.

Q. Do you really know anything at all about her employment with the respondent companies?

A. I know she was in the employ of the Somerville Manufacturing Company for some time and she was discharged shortly before the strike took place.

Q. And you consider Fay Katz in your group for collective bargaining purposes?

A. I do.

Q. She was out of the employ of the company on the day of the strike?

MR. MOSCOVITZ:

We will stipulate—

MR. GIROFSKY:

No, we won't stipulate, anything of the kind.

MR. MOSCOVITZ:

But the Complaint says it. I don't understand this procedure.

MR. GIROFSKY:

How about your proof?

MR. MOSCOVITZ:

We are going to put the party on and have it proved. What else do you want?

I would consider that worker as one of the workers of the shop because she was not discharged by the employer but she was coerced into quitting her job, trying to get something better.

Q. What do you mean by coercion?

A. Well, a person can be coerced.

MR. MOSCOVITZ:

I don't think it is necessary to go into what this gentleman thinks about coercion or what his philosophy is, it is beside the point.

MR. GIROFSKY:

I want to know what his philosophy is. He is giving the membership of these people here based on certain conditions and philosophy and I want to know what they are.

A. It is about time you knew the philosophy of labor organizations, of organized labor.

Q. Answer the question.

A. What is the question?

(Question read).

A. Yes, a worker can be coerced by another person and he can be coerced to commit an act forced by circumstances.

Q. Did you ever coerce any of these girls?

A. I did not.

Q. Now, you don't know of your own knowledge that Tessie Barone was an employee of the company on September 18, do you?

A. I do not know.

Q. And you don't know when she was last an employee of the company?

A. I can give you that information.

Q. Do you know now?

A. Right now I don't know. I have a record of it.

Q. And you consider her a member of that group for collective bargaining?

A. Yes, I do.

Q. And Helen Lee, was she employed by the company on September 18th?

A. I couldn't say whether she was employed on September 18th, but I know she was employed shortly prior to September 18th.

Q. When was she employed prior to September 18th?

A. Probably a week or two before.

Q. Do you know exactly?

A. Not exactly, no.

Q. It might have been two weeks?

A. Yes.

Q. Might have been three weeks?

A. Yes. Why guess at it, I have the information.

Q. I am asking you to answer the question?

A. I don't know of my own knowledge now, but I have the information for you.

Q. It might have been three weeks?

A. Yes.

Q. It might have been four?

A. It might have been six months for that matter.

Q. And yet you considered Helen Lee a member of that group?

A. That's right.

MR. MOSCOVITZ:

I may be wrong, Mr. Examiner, but my recollection is that the names of the employees of the company are in the records and it might simplify matters to check those names against the record.

MR. GIROFSKY:

We have done that.

MR. MOSCOVITZ:

According to the testimony this morning they were of a certain date. If there are some that don't check, it seems to me we ought to limit the examination to that. I remember distinctly Helen Lee's name was brought up.

A. Helen Lee is here. She can testify.

MR. GIROFSKY:

Nobody is asking you.

BY MR. GIROFSKY:

Q. Anna Lee, was she in the employ of the respondent companies on September 18th?

A. Not on September 18th, no.

Q. When was she in the employ prior to the 18th?

A. I know it is either Anna Lee or Helen Lee left the shop two days before the strike was called.

Q. I am speaking now of Anna Lee.

A. I don't know which one it is.

Q. And you considered Anna Lee as a member of the group?

A. Yes.

Q. Mary Kosar or Kosar, Mary?

A. Mary Kosar, I believe, walked out with the rest of the girls on the day of the strike, if I am not mistaken.

Q. Do you know?

A. I don't know.

Q. Do you know if she was in the employ of the companies on the 18th?

A. I don't know.

Q. Do you consider that party as a member?

A. I have a list of all these people who walked out.

Q. Elizabeth Shoaka, was she in the employ of the respondent companies on the 18th?

A. No, she was one of the discharged girls.

Q. When did she last work for the company?

A. Oh, I believe two weeks before September 18th, two or three weeks.

Q. Do you know the exact dates?

A. No, I couldn't tell you off hand.

Q. Was she discharged or laid off?

A. I couldn't tell you whether she was discharged or laid off.

Q. You don't know?

A. No.

Q. And yet you took an oath before the National Labor Relations Board stating that she had been discharged; is that right?

A. Yes.

Q. Yet today you say you don't know if she was discharged?

A. I don't know now but I knew at that time, but if you will let me look at the records.

Q. Does your memory fail you?

A. Sometimes it does.

Q. You considered Elizabeth Shoaka a member of that group? Is that right?

A. Yes.

Q. Angelina Matteis, was she in the employ of the respondent companies on September 18th, 1935?

A. She was not working that day, no.

Q. How long before the date was she working?

A. Several days. I couldn't commit myself, I don't know.

Q. Might have been two weeks?

A. I couldn't say. If you will let me refer to my records I will tell you exactly.

Q. You don't know, yet you considered her a member?

A. I do.

Q. Now, Ethel Rice, was she working on the 18th of September, 1935?

A. Ethel Rice, I believe was discharged.

Q. Yes or no.

A. No, she was not.

Q. She was not. When did she last work for the respondent company?

A. I believe she was discharged on the day of the first meeting, or the day after the first meeting, the 21st or 22nd of August.

Q. Do you know of your own knowledge whether she was discharged or laid off?

A. From her information, she was discharged.

Q. And it is only from her information?

A. From her information.

MR. GIROFSKY:

I ask that the statement that she was discharged be stricken from the record.

MR. MOSCOVITZ:

You continued to press the question and asked for a clarification of the question. I insist that it stand. An attorney can't ask and strike and do whatever he wants.

TRIAL EXAMINER GATES:

It may stand.

BY MR. GIROFSKY:

Q. You consider Ethel Rice a member of that group for collective bargaining purposes?

A. You mean Ethel Rice?

Q. Ethel Rice, yes.

A. Yes.

Q. Now did you know Mary Petrone?

A. Not personally, no.

Q. You didn't?

MR. GIROFSKY:

Is Mary Petrone in court?

A VOICE:

I am here but I am her sister. She is sick in bed.

BY MR. GIROFSKY:

Q. Was Mary Petrone in the employ of the respondent companies on September 18, 1935?

A. If you mean was she working there on that date, she was not working there, but I considered her in the employ because she was a worker in the shop.

Q. When was she last employed there prior to September 18th?

A. Of my own knowledge at the present moment I don't know, but you have a list of all the workers. If I have considered her as one of the workers, I have reason for it. My list shows it.

MR. GIROFSKY:

I ask that that be stricken from the record. It is not responsive, merely volunteered by the witness.

BY MR. GIROFSKY:

Q. Josephine Hurley. Was she employed by the respondent companies on September 18, 1935?

A. No, I don't believe she was.

MR. GIROFSKY:

Is she in court?

VOICES:

She is not here.

BY MR. GIROFSKY:

Q. Do you know when Josephine Hurley was last in the employ of the respondent company?

A. I do not.

Q. It might have been six months preceding September 18, 1935?

A. No, it couldn't possibly have been, or I would not have had the application there.

Q. Why did you say, "couldn't possibly be"?

A. If I felt she was not a member of the shop, I would not accept her.

Q. Did you ever see the employer's books?

A. I did not.

MR. MOSCOVITZ:

Would the employer show him his books?

MR. GIROFSKY:

He never asked for them.

A. The employer refused to show me his books when I first came to the place to see whether the amount of girls' earnings was true, whether it corresponded with his books.

MR. GIROFSKY:

I ask that that be stricken. There is no question pending. It is a volunteered answer.

TRIAL EXAMINER GATES:

It may be stricken.

BY MR. GIROFSKY:

Q. Then you considered Josephine Hurley a member of that group for collective bargaining?

A. Yes.

Q. Was Jean Kolendo in the employ of the company on September 18, 1935?

A. I am not considering her.

Q. Yes or no.

A. She was not.

Q. When was she last in the employ?

A. I don't know, and I don't consider her a member of that shop because I have not seen her since she signed that application blank.

MR. MOSCOVITZ:

We will stipulate that Jean Kolenda is out.

MR. GIROFSKY:

We won't stipulate. It is a matter of testimony.

MR. MOSCOVITZ:

Do you refuse to allow me to strike her from my list?

MR. GIROFSKY:

That brings your total down to—

MR. MOSCOVITZ:

Just a moment. Is Mr. Girofsky interested in getting at the truth of the matter before this Board for the purpose of ascertaining the facts to be submitted to you, or is he simply interested in chastising and embarrassing this individual? If he is not, there is a simple way of settling this matter. Mr. Fainblatt is here. Do you have your employment records with you?

MR. GIROFSKY:

We have gone over this entire situation on other occasions and I have submitted a complete list of names to the National Labor Relations Board's representative in New York, names of those in the employ of this company as our records indicated, those who left and those who walked out, and they come along and say our records are not correct and they have introduced now a group of cards, some forty or more cards and Mr. Moscovitz would attempt to offer these cards and under cross examination it developed that some of these cards are improper, so if we are getting at the truth we are getting at it now and not under direct examination conducted by Mr. Moscovitz.

TRIAL EXAMINER GATES:

You may proceed. Certainly we don't want to let anything slip by here, Mr. Girofsky, but to the extent that it can be done, and recognizing that the witness has testified that he does not know of his own knowledge about who—had never seen them working in the plant and all that, I think there might be some of this that is repetitious and can be eliminated.

MR. GIROFSKY:

He has offered these cards and facts in a pack.

TRIAL EXAMINER GATES:

I understand. Please proceed.

BY MR. GIROFSKY:

Q. Jean Kolenda you say was not considered as an employee, is that right?

A. Yes.

Q. And even though she signed an application on August 28th, 1935, you say she is not properly a member. Is that right? Yes or no.

A. No, she is not a member. For this reason—

Q. Never mind.

MR. MOSCOVITZ:

She is not a member and we stipulate or I will move to strike here from the roll of consideration that name, if Mr. Girofsky does not consent to a stipulation.

BY MR. GIROFSKY:

Q. Mrs. Gitowsky—was she employed on the 18th of September, 1935?

A. She was not working on the 18th of September.

Q. How long before the 18th was she working?

A. My list will say that, I don't know off hand.

Q. She might have been employed a week or two

weeks before?

A. I couldn't say.

Q. Can you say approximately?

A. No, I can't.

Q. You don't know?

A. No.

Q. Yet you considered her a member?

A. Yes, I did.

Q. Vincent Necastro—was he employed on September 18th?

A. He was.

Q. He didn't walk out on the 18th, did he?

A. No, he did not.

Q. And you gave orders to all persons employed or rather affiliated with your Union, to leave on the 18th, didn't you?

A. That's right.

Q. You all agreed?

A. That's right.

Q. And he left the day after that?

A. He came down a week after that.

Q. And yet he signed on September 4th, some fourteen days preceding the strike?

A. Yes.

Q. Magdalene Persano—is she here?

(One of the spectators arose).

Q. Was she employed September 18th?

A. No, she was not.

Q. When was she employed prior to the 18th?

A. I couldn't tell you off hand.

Q. Do you know?

A. I have her listed.

Q. Do you know?

A. I don't know.

Q. You considered her a member of the group for collective bargaining; is that right?

A. Yes.

Q. Where did you get this information that you have on these cards?

A. From the workers themselves.

Q. From the girls?

A. That's right.

Q. It is not of your own knowledge?

A. No.

Q. Not given to you in the presence of Mr. Fainblatt or Marjorie Fainblatt?

A. No.

MR. GIROFSKY:

I object, at this time, Your Honor, to the admission of these cards. They are improper, purely hearsay and prepared at a time when the respondent was not present. For those reasons I object to their admission. They are not binding on respondent.

MR. MOSCOVITZ:

Mr. Girofsky, are they all the cards I gave you? I mean you are objecting to every one of them? Do you want to—

MR. GIROFSKY:

Are you offering them at this time?

MR. MOSCOVITZ:

I will wait until you have finished. Will the Examiner reserve decision on that until I have had an opportunity to make a statement on it?

BY MR. GIROFSKY:

Q. Now, going back, Frances Cicero, has she ever paid her application fees?

A. None of the workers have ever paid an application fee. It is not the custom of our Union.

Q. None of the workers have paid to date any application fee? Is that right?

A. That is right.

Q. Are they considered members?

A. Yes.

Q. By whom, you?

A. Yes.

Q. Do you now have a rule on here—do you—

A. Yes, we do.

Q. Requiring payment before any membership is considered?

A. We do, but only in certain cases.

Q. What is your application fee?

A. It depends upon the nature of the industry, the people that are employed in it, it depends on their earnings.

Q. The more money they make, the higher the fee?

A. It depends on the locality.

Q. Isn't that it?

A. No.

MR. MOSCOVITZ:

I object to the question on the ground of its immateriality. I don't see where the amount that any one pays as received for the joining of the Union has anything to do with the matter before you.

MR. GIROFSKY:

He is testifying that these girls are members. I want to see on cross examination if they are members. It is strange that one can become affiliated in these things for nothing.

MR. MOSCOVITZ:

Some people work for God, you know.

TRIAL EXAMINER GATES:

The last question, the objection is sustained.
BY MR. GIROFSKY:

Q. When were you at my office? *

A. I will say about ten days or two weeks after the strike was called— I can't remember the exact date.

Q. And Frank Ross was with you?

A. Yes.

Q. Do you remember your conversation with me?

A. I do.

Q. Do you remember telling me that you were not considering any negotiations for re-employing these girls as to the matter of wages and hours unless, in the first instance, Mr. Fainblatt would sign an agreement making his shop a closed shop? Do you remember that?

A. I do not.

Q. You deny saying that to me?

A. I do.

Q. Do you remember my secretary being present for a moment in the office?

A. I do.

Q. Did you make that same assertion to Mr. Fainblatt?

A. I did not.

Q. That you would not consider these girls going back to work unless the shop was unionized?

A. I did not say that at all.

Q. Do you remember telling Mr. Moscovitz and Mr. Feller and myself and Mr. Fainblatt at a meeting held in the Post Office that your terms were sixteen dollars minimum, thirty-seven and a half hour week?

A. That's right.

Q. And a closed shop?

A. I said a Union shop—that's right.

Q. A Union shop, meaning that no one but a member of the union could work in that plant?

A. It does not mean that.

Q. What is the Union shop you want to install down here?

A. I want a Union shop where the members belonging to the union shall be treated on an equal basis.

Q. Will you permit non-union members to work alongside of your union members in that shop?

A. I will certainly do that.

Q. Did you ever offer those terms to Mr. Fainblatt?

MR. MOSCOVITZ:

In my presence, he did, Mr. Examiner, as long as I am drawn into this thing.

MR. GIROFSKY:

It is new to me.

MR. MOSCOVITZ:

I was there.

BY MR. GIROFSKY:

Q. You offered a contract to Mr. Fainblatt that night, didn't you?

A. I did.

Q. Have you got a copy of it?

A. I think you have the copy. I left three copies on your desk there.

Q. On my desk where?

A. When we had the conference at the post office.

Q. I had no desk there.

A. We were all sitting around a desk and the copies of the agreement were left there.

Q. You never handed a copy of an agreement to me, did you?

A. I handed out three copies. I don't know who took them.

Q. You say you spoke with Mr. Fainblatt then—the first time was when?

A. The first time I spoke to Mr. Fainblatt I believe was either on or about August 30th.

Q. Are you sure?

A. I am not certain as to the dates, but I am sure it was shortly after the second meeting.

Q. Why were you so certain with respect to your dates under direct examination by Mr. Moscovitz?

MR. MOSCOVITZ:

Mr. Examiner, as I recall, the witness' replies to my questions were approximations.

BY MR. GIROFSKY:

Q. When did you see him again?

A. I didn't see him again. I called him up on the telephone the second time.

Q. You didn't think it was worth while—you were acting in behalf of the girls—to go there personally?

A. I thought it was worth while but I was very busy in my office, and not hearing from Mr. Fainblatt, I called him up to find out what his answer would be.

Q. Do you know Commissioner Moffett of the United States Department of Labor?

A. I do.

Q. Did he ever speak with you?

A. He did.

Q. As a matter of fact, he attempted to conciliate this whole condition down here, didn't he?

A. He did.

Q. He asked you to permit the girls to go back, didn't he?

A. He asked me to permit seven girls to go back and that the others would be absorbed within due time, but under non-union conditions.

Q. When was that?

A. A couple of weeks ago.

Q. Did you permit them to go back?

A. I did not.

Q. Aren't you interested in whether or not these girls have employment?

A. I am.

Q. Then why didn't you let them go back?

A. Because for them to go back under the same conditions that they were working under would be of very little benefit to them.

Q. There are a lot of girls working under those conditions today, aren't there?

A. Because they are working under a little better conditions.

Q. Then why didn't you let these seven girls go back under these better conditions?

A. Because I don't let seven go back and forty girls be out.

Q. Didn't you say they would be absorbed as the amount of work required?

A. That is what he told me.

Q. As the amount of work required?

A. That is something very indefinite.

Q. As a matter of fact, you are not interested in letting these girls go back, unless the shop is unionized.

A. I didn't say that.

Q. Didn't you tell me those very words in my office before Mr. Ross and my secretary?

A. I did not. In the first place, I came to your office to see if we could settle this labor dispute in some peaceful way, and you told me deliberately that Mr. Fainblatt would not talk union or recognize anybody that had any connection with the union.

Q. Then why didn't you permit him to talk to the girls as individuals?

A. Because they wouldn't have any protection unless they have some union or organization to back them up.

Q. And you were the great savior and protector of these girls; is that right?

A. That is right.

MR. MOSCOVITZ:

If there is no objection, I move that Mr. Girofsky's characterization of Mr. Posner be stricken from the record.

MR. GIROFSKY:

There is an answer to it.

TRIAL EXAMINER GATES:

It may stand.

BY MR. GIROFSKY:

Q. When was the first meeting you had with the employees?

A. The 21st of August.

Q. What form of notice did you give?

A. To the employees of the shop, I instructed the three girls who came to my office on the 14th to get as many people of the shop interested in attending a meeting as they could.

Q. Did you instruct them to give notice to all of them?

A. Yes.

Q. You don't know if they did give notice to all of them, do you?

A. No.

Q. Of your own knowledge?

A. No, but I take it for granted.

Q. Don't take anything for granted.

MR. MOSCOVITZ:

What difference does it make?

MR. GIROFSKY:

I want to see what a representative is—how they are selected.

MR. MOSCOVITZ:

Take a day off some time.

MR. GIROFSKY:

I think the Board does too.

• BY MR. GIROFSKY:

Q. How many girls were employed at the plant on September 18th?

A. To my knowledge approximately about fifty-five or fifty-eight.

Q. How many did you say walked out?

A. About twenty-eight.

Q. Twenty-eight. That left thirty girls?

A. According to those figures, it would be so.

Q. That is on the very day of the strike. That is all.

Redirect Examination

BY MR. MOSCOVITZ:

Q. Mr. Posner, in your conference with Mr. Girofsky, the one to which Mr. Girofsky referred, what was discussed?

A. I came up to Mr. Girofsky's office for the purpose of trying to reach some peaceful agreement. I was not anxious to keep the people out, as he stated. I wanted to return them to work as soon as

I possibly could, and I was perfectly willing to sit down and negotiate some sort of an agreement with him whereby we could call it off, and Mr. Girofsky told me Mr. Fainblatt, his client, would absolutely refuse to deal with me as a representative of the workers, and in the light of that, I had nothing else to say, and I just said, "Good-bye."

Q. Did he say he would refuse to have anything to do with the Union, as such?

A. He did.

Q. Refer for a moment to the question that Mr. Girofsky asked you about Mr. Moffett?

A. Yes.

Q. Did you meet with Mr. Moffett?

A. I did.

Q. Did Mr. Moffett submit a proposition for a settlement of this dispute?

A. He told me that Mr. Fainblatt—

MR. MOSCOVITZ:

If Mr. Girofsky would mind stepping away from the witness—

THE WITNESS:

It is all right. He does not get me nervous.

Q. Mr. Moffett told me Mr. Fainblatt would take back seven girls and he would try to absorb the rest of them as times permitted. As that was very indefinite, I told him I could not see my way clear.

Q. Were the balance of the employees who were to be re-absorbed to go back individually?

A. Individually, yes.

Q. Without consideration or having dropped union affiliations?

A. Having dropped union affiliations, yes.

Q. So, for you to have agreed to this proposi-

tion, would have meant you were compromising with the law, wouldn't it, as you understood it?

A. That is right.

(Question and answer read to counsel.)

MR. GIROFSKY:

Thanks, Mr. Moscovitz, for asking that question while I was in conference with an associate. I would like to have had an opportunity to object to that.

MR. MOSCOVITZ:

Am I supposed to watch your maneuvers in order to arrange my examination in accordance with it?

MR. GIROFSKY:

Some times we extend courtesies to counsel.

MR. MOSCOVITZ:

Courtesy is extended also by listening to counsel and not holding conversations on the outside.

MR. GIROFSKY:

I object to it.

MR. MOSCOVITZ:

The question has been answered.

MR. GIROFSKY:

I know that.

BY MR. MOSCOVITZ:

Q. Mr. Posner, did you make up a list of names of employees of the company who went out on strike?

A. I did.

Q. Did you make up a list of names of employees who were alleged to have been discharged before the strike?

A. I did.

Q. How did you make up the list?

A. On the information that I gathered from the applicants themselves.

Q. Did you speak with them individually?

A. I did.

Q. They gave you their stories?

A. They did.

Q. As a result of that you made up a list?

A. That's right.

Q. Do you have such a list? May I see it?

A. I submitted that list to you before.

Q. You have it?

A. You have that list.

Q. Is this the list to which you have just been referring?

MR. MOSCOVITZ:

He is identifying it.

MR. GIROFSKY:

I object to this list. The witness has testified he had made this list out of hearsay from information given him by the girls. The best evidence is the girls themselves.

A. Yes, it is. That explains it all.

MR. GIROFSKY:

I object.

MR. MOSCOVITZ:

I have not offered it yet.

MR. GIROFSKY:

I object to any testimony on it.

MR. MOSCOVITZ:

He raised an objection when he moved away. Does your objection still stand?

MR. GIROFSKY:

If you are offering it, yes, it does, but—

MR. MOSCOVITZ:

You know I am not offering it. I am having it identified.

MR. GIROFSKY:

I object to any testimony pertaining to this list.

MR. MOSCOVITZ:

I submit, Mr. Examiner, that I am entitled to have an exposed exhibit identified.

(Document referred to marked for identification, Board's exhibit No. 2, Witness Posner.)

BY MR. MOSCOVITZ:

Q. Mr. Posner, I show you Board's exhibit No. 2, marked for identification. Is that the list of names to which you have just been referring?

A. This is one list that I submitted. I believe I submitted it to the National Labor Relations Board, but I also gave you a list a little while ago which is practically a repetition of this.

Q. But this is the list you submitted?

A. Yes.

Q. You got that information yourself?

A. I got this from the applicants themselves. That is the only way I could get it.

Q. What does the list show?

A. The workers who walked out, the day of the strike, those discharged prior to the strike, some of them who left of their own accord, and it explains every worker's case separately.

MR. MOSCOVITZ:

I offer it in evidence.

MR. GIROFSKY:

I object. I wish to object to it, Your Honor, as it is predicated on hearsay entirely, and the best evidence is the girls themselves. The wit-

ness' own testimony shows the facts surrounding the compilation here of these names. For those reasons I object.

TRIAL EXAMINER GATES:

You have not had an opportunity to look it over? I would like to have this thing move along and get the most facts that it is possible to agree upon as to what is correct. I will reserve decision on that, in the hopes that counsel for the Board and counsel for respondents may get together with Mr. Moscovitz as to what some of the facts are with relation to those people. We should narrow it down.

MR. GIROFSKY:

I still stand on the objection. Unless Mr. Moscovitz has any objection. We are looking over the list.

MR. MOSCOVITZ:

No further question.

MR. GIROFSKY:

I still have my objection to it.

TRIAL EXAMINER GATES:

You do not wish the witness any further?

MR. MOSCOVITZ:

No.

(Witness excused.)

MARY MORANO, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination

BY MR. MOSCOVITZ:

Q. What is your full name?

A. Mrs. Mary Morano.

Q. Where do you live?

A. 57 Gaston Avenue, Raritan, New Jersey.

Q. Were you employed by the Somerset Manufacturing Company?

A. Yes, I was.

Q. How long did you work for the company?

A. Well, I went there to work in November. I worked until February.

Q. What year?

A. 1934.

Q. You worked until February of 1935?

A. Yes.

Q. Then what happened?

A. I became ill and I stayed home, and then I went back in July.

Q. You worked until September?

A. September 18th, the day I walked out on strike.

Q. You went out on strike September 18th, 1935?

A. Yes.

Q. At the time you went out on strike, were you a member of the Union?

A. Yes.

Q. Do you remember when you joined the Union?

A. I do.

Q. What date?

A. I believe it was August 14th or 15th.

Q. 1935?

A. Yes.

Q. And did you attend the Union meetings?

A. Yes, I did.

Q. Did you attend all the Union meetings before the strike?

A. I believe all.

Q. How many of them were there, do you remember?

A. I would say about five or six.

Q. Before the strike?

A. Yes.

Q. And what kind of work were you doing before you were discharged—before you went out on strike?

A. What do you mean, the line of work?

Q. Yes.

A. I was working on heavy ski pants.

Q. And was your job an operator on a machine?

A. Yes.

Q. You operated a machine?

A. Yes.

Q. Did you handle the materials that pass through the plant in process of production?

A. Yes.

Q. What sort of things did you work on? You say ski pants?

A. Yes, ski pants.

Q. What other things?

A. We were making ski pants at the time I went back. That is all I worked on while I was there. Maybe a dozen or two of slacks, I made.

Q. But the great majority of the work was ski pants?

A. Yes.

Q. Piece work or regular salary?

A. Piece work.

Q. Did you get so much a dozen?

A. Yes.

Q. How much were you making a dozen on piece work rates?

MR. GIROFSKY:

I object to this. I don't see where it is material to the issue.

TRIAL EXAMINER GATES:

I will admit it.

MR. GIROFSKY:

Exception.

A. I was getting sixty-three cents a dozen.

Q. Sixty-three cents a dozen?

A. Yes.

Q. And how many hours did you work a week?

A. Forty.

Q. Forty. Were you working regularly?

A. Yes.

Q. Forty hours a week?

A. Yes.

Q. Were you averaging forty or did you just work forty hours a week?

A. I just worked forty hours a week.

Q. Were you employed by this company during the N. R. A. also?

A. Yes.

Q. Did you work then on piece work?

A. Yes.

Q. And what was your work rate at that time?

A. Well, I always made over twenty dollars at that time.

Q. How many hours?

A. Forty hours.

Q. And after the N. R. A., how much did you make?

A. When I came back to work, after I was ill, I came back and I could just about make twelve or thirteen dollars a week.

Q. Same number of hours?

A. Yes, in fact more work.

Q. More work. How do you account for the fact that you worked the same number of hours and yet you made less money after the N. R. A.?

A. I had to work much harder. I could feel the difference when I came home at night.

MR. GIROFSKY:

I object. It is not responsive.

TRIAL EXAMINER GATES:

It may be stricken.

BY MR. MOSCOVITZ:

Q. Did you receive a cut in your piece rate?

A. I did.

Q. What was the cut?

A. As I was saying, when I worked under the N. R. A., I was getting ninety cents a dozen, and when I went back in July, I was getting sixty-three cents a dozen.

Q. I see, you say there was a speed up of operations so you had to turn out more work for the same number of hours?

A. We had to put out so much work, naturally, yes.

Q. Yes. Yet there was a big difference because of the reduction in your rate. Had you ever spoken with any supervisory employee or with Mr. Fainblatt about the union before you went out on strike?

A. Well, I spoke to a few of the girls outside of the shop.

Q. But didn't you ever speak with Mr. Fainblatt?

A. No, I never did.

Q. Or with a foreman, if there was one, about the union?

A. One time, he asked me.

Q. When was that, do you remember?

A. It was about two weeks before I walked out on strike.

Q. Who was that?

A. Mr. Ruby, our foreman.

Q. What did he ask you about it?

MR. GIROFSKY:

I object to any testimony concerning conversations between this witness and Mr. Ruby. It is hearsay.

TRIAL EXAMINER GATES:

Objection overruled.

MR. GIROFSKY:

Exception.

A. He asked me what the Raritan Reds were going to do, were they going to join the union or not, and I told him the girls had a right to do what they please, and the boss had a right to do what he pleased and we had a conversation, but that was all he said to me.

Q. You know then you had a right to join the Union?

A. Yes.

Q. You could join any organization you wanted?

A. Yes.

Q. You felt it was entirely your own affair?

A. Yes.

Q. You also knew, did you, that you could have the Union represent you for purposes of collective bargaining?

A. Yes.

MR. GIROFSKY:

I object, Your Honor, the question is leading and calls for a conclusion.

MR. MOSCOVITZ:

I will withdraw the question.

BY MR. MOSCOVITZ:

Q. Did you know what Mr. Posner's duties were in regard to the affairs of the Union members?

MR. GIROFSKY:

I object to this, Your Honor. It has to be shown that this girl is in a position to know what his duties are.

BY MR. MOSCOVITZ:

Q. You are a member of the Union?

A. Yes.

Q. You did attend Union meetings?

A. Yes.

Q. Was the contract discussed?

A. What do you mean?

Q. Was it discussed that Mr. Posner would take up certain matters with the company?

A. Yes, we asked him to.

MR. GIROFSKY:

I object to any testimony pertaining to conversations between this girl and Mr. Posner. It is hearsay.

TRIAL EXAMINER GATES:

The objection is overruled, but I would caution Mr. Moscovitz to, as far as he can, connect the questions.

MR. GIROFSKY:

Exception.

BY MR. MOSCOVITZ:

Q. You just stated that you asked Mr. Posner to—what did you ask him to do?

A. Conditions were so bad, we couldn't stand it any longer, because after I got back, it was hard to take care of a sick husband and a baby. I had to give milk to my baby, so when I got there and saw wages were so low, I talked to the girls—

MR. GIROFSKY:

This is not responsive about her husband and baby. I don't see why this should be gone into, on the record, and I ask that it be stricken.

TRIAL EXAMINER GATES:

Objection sustained. The reporter may strike the whole answer, but read the question to the witness again, please.

(Question read.)

A. I will have to tell my story first before I can answer it.

TRIAL EXAMINER GATES:

Try to confine the answer to the question. Conditions of work are one thing and conditions at home are another thing.

A. We decided, three girls, to talk to him. That is how come I have to tell the story before I get to that point.

TRIAL EXAMINER GATES:

Very well, state it your own way.

A. When I came back and saw wages were so bad, I asked the girls, "Have wages been like this all along?" and they said yes, for a long time. And we used to talk among ourselves, and we had sisters

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of our own, so my sister told me, "Why don't you try to organize the shop."

MR. GIROFSKY:

I object to all this kind of thing. It is not necessary for her to say what she said to Mr. Posner.

TRIAL EXAMINER GATES:

It is material.

A. So the girls there—all of them—appointed three of us to go down to Mr. Posner's office.

MR. GIROFSKY:

Is Your Honor permitting this?

TRIAL EXAMINER GATES:

Yes.

MR. GIROFSKY:

I take exception to all of this and ask that it be stricken.

A. So us three girls went down to Mr. Posner's office and we asked him to help us. Of course, he was so busy he couldn't even help us, so we begged him to do it, and he told us to go back to the shop and get the girls to come to a meeting, so we got the girls to come to a meeting. Then he called Mr. Posner up and asked him to speak to us, and he did.

BY MR. MOSCOVITZ:

Q. So you asked Mr. Posner to come down and help you?

A. Yes.

Q. And it was in that manner that the organization started? Is that right?

A. Yes.

Q. Now, going back for a moment again to Mr. Ruby. Did Mr. Ruby make any further reference to the Union in your presence?

A. No.

Q. Before the strike, were you ever called into a meeting attended by Mr. Fainblatt, in which the Union was discussed?

A. Repeat that again.

Q. Before the strike, which was September 18th, did you ever attend a meeting conducted by Mr. Fainblatt in the plant at which time the Union was discussed, organization was discussed?

A. Yes, there was two meetings I was at.

Q. When was the first?

A. I believe it was August 21.

Q. Was this right after you had applied for Mr. Posner's help, or was it before?

A. It was after.

Q. After. And do you remember how soon after?

A. About a week or two, I guess. I couldn't say.

Q. And where was this meeting held that you refer to?

A. Right in the plant.

Q. Do you recall what time of day it was?

A. It was about four-thirty.

Q. Do you recall who was there?

A. Yes.

Q. Who?

A. There was the mayor of Somerville, Mayor Hess, and a Mr. Hawley, that rents the building to Mr. Fainblatt.

Q. From Somerville?

A. Yes.

Q. The younger gentleman?

A. Yes.

Q. Who else?

A. There was another meeting.

Q. Take this one meeting. And was Mr. Fainblatt there?

A. Yes.

Q. Who else was there?

A. That is all.

Q. How many girls?

A. All the girls had to stay, because he closed the doors.

Q. Closed the doors?

A. Yes.

Q. How did he get anyone to go?

A. We were working at our machines and he closed the power off and he told all the girls to circle around, and he introduced us to these two men.

Q. Whom did he introduce first?

A. Mayor Hess.

Q. What did Mr. Fainblatt say?

A. He just said he was the mayor and he had something to say to us.

Q. Did the mayor then speak?

A. Yes.

Q. Do you recall what the mayor said?

A. Yes.

MR. GIROFSKY:

I object, Your Honor, pure hearsay.

TRIAL EXAMINER GATES:

Objection overruled.

MR. GIROFSKY:

Exception.

BY MR. MOSCOVITZ:

Q. Do you recall what the mayor had to say?

A. I remember part of it.

Q. Tell us in your own words what took place.

A. He told us.

MR. GIROFSKY:

I object to this witness telling what the mayor

had to say unless he can tell us what he said entirely, but not part.

A. I can remember some exact words.

TRIAL EXAMINER GATES:

She can go ahead and tell us.

MR. GIROFSKY:

Objection.

A. He told us to stick to our boss because that is where our bread and butter was, and that we should have no connection with the Union, that our boss was against the Union, that if we walked out on strike, we would be on relief and it was terrible to be on relief, and he told us to bring our troubles to the boss.

Q. Did he advise you to stay away from the Union?

A. Yes.

Q. Was there any other similar meeting?

A. Then Mr. Hawley spoke after that.

Q. The same day?

A. Yes.

Q. Was he there too?

A. Yes.

Q. Who introduced Mr. Hawley?

A. Mr. Fainblatt.

Q. What did Mr. Fainblatt say about Mr. Hawley?

A. He just introduced us to him, that is all.

Q. What did Mr. Hawley have to say?

A. He told us he was in some shipping concern and he was making one hundred and fifty dollars a week, that was a Union shop.

MR. GIROFSKY:

I object to this, Your Honor, what Mr. Hawley had to say, it is pure hearsay.

A. Yes, he told us we shouldn't join the Union because he wouldn't sign.

Q. Was that after the meeting?

A. Yes.

Q. While you were still working?

A. Yes.

Q. Do you remember when it was?

A. I don't remember. He was always saying it to us.

Q. You weren't discharged, were you?

A. No.

Q. You just went out on strike?

A. Yes, but I don't believe he knew I had anything to do with the Union because I had to beg for my job.

MR. GIROFSKY:

I object to this.

TRIAL EXAMINER GATES:

That last part may be stricken.

BY MR. MOSCOVITZ:

Q. Why did you go out on strike?

A. To better conditions.

MR. MOSCOVITZ:

That is all.

Cross Examination

BY MR. GIROFSKY:

Q. Are you working today?

A. No.

Q. Have you worked since you left? Since you voluntarily left your employment?

A. No.

Q. And have you applied for employment anywhere since you left?

A. No.

Q. How much are you receiving today?

MR. MOSCOVITZ:

I object.

MR. GIROFSKY:..

I believe this is material cross examination.

MR. MOSCOVITZ:

Just a moment,—it might be that your objection is properly taken. I might not have understood the prior question. Does the record disclose that she is working today?

MR. GIROFSKY:

No.

TRIAL EXAMINER GATES:

The objection is good.

BY MR. GIROFSKY:

Q. Are you receiving any income today?

A. The Union is paying me seven dollars a week for relief.

Q. What do you do in return for that seven dollars a week?

A. Practically nothing.

Q. You picket, don't you?

A. Once in a while.

Q. And prior to September 18th, 1935, what were your wages?

A. Repeat that again—I didn't understand.

Q. Before September 18th, 1935, how much did you make a week?

A. You mean from July until the day I walked out on strike?

Q. The last week you were there?

A. I believe I got, I was supposed to get sixteen, but I got fourteen.

TRIAL EXAMINER GATES:

Well, it may be relevant. Please proceed.

MR. GIROFSKY:

Exception.

A. He said they weren't allowed to smoke and one fellow got caught smoking, so this fellow got fired, so they all walked out on strike for this one fellow to get him back to work, so they were out of work so long, when they did go back, they had to put up so much money, so it wouldn't do any good, so he openly stated, it would do no good to join a union because he had the experience and he told us he really felt we should be glad because he had a girl in his office that worked for him that made eight dollars a week, using her brains.

Q. Said the girl that worked for him used her brains?

A. Yes, and she made eight dollars a week.

Q. Did he advise you to stay out of the Union?

A. Yes.

Q. Any other meetings of the same sort held?

A. Yes, I believe August 28th, Sheriff Adams came to speak to us.

Q. Oh, and was this in the plant too?

A. Yes.

Q. What time of the day?

A. Five o'clock. All the girls came down for their pay.

Q. All the girls came down for their pay?

A. Yes.

Q. You always came downstairs to get your pays on the main floor so when you get your money, it was closed and nobody could get their money and he spoke to us, he told us, he waited until all the girls

got downstairs. He said, "Wait a minute, girls, I want to introduce someone to youse."

Q. Who said that?

A. Mr. Fainblatt. And then he introduced us to Sheriff Adams, and Sheriff Adams said—

MR. GIROFSKY:

Objection.

TRIAL EXAMINER GATES:

Witness may proceed.

MR. GIROFSKY:

Exception.

A. So Sheriff Adams told us we had a nice clean place, said it was clean and sanitary and he don't believe that any girl made a low pay in there. He said, being he was looking over the payroll, he did not think so, and he told us we shall have no connection with the Union because Mr. Fainblatt would never sign for a union. Then Mr. Fainblatt spoke to us. He said, "You can call us Mr. Benjamin, Mr. Franklin, you can call me Mr. Devil, anything you can call me, as long as you bring your troubles to me," but it won't do any good to bring your troubles to him because he wouldn't do anything for you.

Q. Was that the last meeting?

A. Yes.

Q. Then they went on strike?

A. All along he was hinting to us not to have anything to do with the Union.

MR. GIROFSKY:

Object to what Mr. Fainblatt was hinting.

BY MR. MOSCOVITZ:

Q. After that, did he speak to you about the Union at all?

A. Maybe if I was in a group.

Q. Did he speak to you?

A. I was a day short. The day was put on my last week.

BY MR. GIROFSKY:

Q. The week of August 30th to September 7th, thirty-six hours?

A. I made forty hours every week.

Q. You never worked less than forty?

A. Maybe a half hour or so, but that was all.

Q. On how many occasions.

A. Once or twice.

Q. You never worked less than forty?

A. No.

Q. Do you remember the week of August 16th or August 23rd?

A. I can't remember that far back.

Q. Did you ever work less than ten hours in one week?

A. No.

Q. Isn't it a fact that on the week of August 16th to August 23rd, you only worked eight hours and received four dollars and forty-five cents?

A. That is impossible.

Q. It is impossible?

A. Yes. I always worked forty hours.

Q. Do you know you are under oath, Mrs. Morano?

A. What do you mean?

Q. Do you know you are under oath to tell the truth?

A. Yes.

Q. You say these records are wrong if they conform to figures I have given?

A. Yes.

Q. You kept a time card, didn't you?

A. Yes.

Q. And when you entered the plant you punched that clock, didn't you?

A. Sometimes I did, sometimes I had another girl punch it for me.

Q. But you had the other girl punch it for you and nobody else had her do it?

A. No.

Q. You accepted the card as it was punched, either by yourself or the other girl?

A. Yes.

Q. You would recognize those cards if you saw them?

A. Yes.

Q. When did your husband take sick?

MR. MOSCOVITZ:

Mr. Examiner, I object to that. I don't see what this woman's family life has got to do with this case.

TRIAL EXAMINER GATES:

I think that was excluded as a matter of fact.

MR. GIROFSKY:

But Your Honor permitted it all to go into the record.

MR. MOSCOVITZ:

I will withdraw my objection.

TRIAL EXAMINER GATES:

It was not in there when she recited the story.

MR. MOSCOVITZ:

I withdraw my objection.

MR. GIROFSKY:

I thought we could tell the story here.

MR. MOSCOVITZ:

Mr. Girofsky objected to my asking her about it and he was sustained, so I withdraw my objection.

Q. How much did you get—how many hours did you work that week?

A. It was close to forty hours.

Q. How many, do you remember?

A. We'l, I will say forty.

Q. Are you sure?

A. Yes.

Q. How many dozen garments did you produce in those forty hours?

A. I couldn't say.

Q. Are you sure of the amount of money you received the last week?

A. I am trying to explain to you.

Q. How much did you receive the last week that you were employed there?

A. I got sixteen dollars, but fourteen was only for that week, I worked a whole day the following week.

MR. GIROFSKY:

I ask that this witness be instructed to answer my question.

A. I got sixteen dollars, but only fourteen was for that week.

Q. How many hours did you work?

A. Forty, but I am not counting the day I put in.

Q. The last week?

A. I made forty in that week, but one day from the week before.

MR. MOSCOVITZ:

Mr. Examiner, I think it would be very helpful—

BY MR. GIROFSKY:

Q. If your time card indicates a thirty-five hour

week, would you accept that time card as being correct, your own time card?

A. No.

Q. That would be an error?

A. Forty hours a week I worked.

Q. Do you know that the records of the company list you as having thirty-five hours a week from September 14th to September 21st?

A. I can't help what their records say, I am telling the truth.

Q. You got sixteen dollars and thirty cents?

A. I told you there was a day there from the week before.

Q. How much did you get the week preceding that, the last week?

A. The week before my last pay—I don't remember.

Q. How much?

A. I don't remember.

Q. Perhaps I can refresh your memory. Do you recall receiving the sum of fifteen dollars and fifty-eight cents?

A. No.

Q. You never received it?

A. No.

Q. Never?

A. No, because I was a day short that week. It was impossible.

Q. From August 30th to September 7th—do you remember—didn't you receive fifteen dollars and fifty-eight cents?

A. No, it was impossible.

MR. MOSCOVITZ:

She said it was impossible.

BY MR. GIROFSKY:

Q. The week of August 2nd to August 9th, 1935, your total time, do you know what it was?

A. No.

Q. You can't recall?

A. No.

Q. Your memory does not go back that far?

A. I lack a memory.

Q. You do lack a memory. Has your memory been lacking on all the information you have been questioned on?

A. No, I am telling the truth right now.

Q. To the best of your memory, isn't that so?

A. I cannot remember that far back, but my last pay I could remember.

Q. That takes you back to the commencement of the Union, doesn't it, yet you remember that for the purpose of direct examination; didn't you?

A. I don't understand you.

Q. Does your memory take you back to working one week, the week of August 2nd to August 9th, 1935, a total of twenty-four hours?

A. No.

Q. All right. Let's go back to the last week. How many dozen garments did you manufacture that week?

A. I can't remember.

Q. You don't remember that?

A. No.

Q. Yet you are certain that you never worked less than forty hours a week?

A. Yes.

Q. You will let that stand even though you did say here a moment ago that on occasions you worked a half hour or less?

A. That doesn't mean much.

Q. Doesn't mean much to you?

A. No.

Q. And July 19th to the 25th, how many hours did you work?

A. I don't remember, I don't remember that far back.

Q. Now, you were one of the first girls to go to Mr. Posner, were you not?

A. Yes.

Q. Who went with you?

A. Ethel Rice and Anna Santora.

Q. And the time you went was when?

A. It was after work.

Q. What day?

A. August 14th—I don't know if it was a Thursday or a Friday, I don't remember.

Q. You were still in the employ?

A. Yes.

Q. How did you learn of Mr. Posner?

A. Through a lot of girl friends that are union.

Q. How?

A. Through a lot of girl friends that are union.

Q. Your employment with Mr. Fainblatt has been since August, 1934; isn't that right? How long have you been in his employ?

A. I came to work in November.

Q. Of what year?

A. 1934.

Q. Yes. And worked until July?

A. I worked until February.

Q. Of 1935?

A. 1934.

Q. Then you had to leave because of your husband's illness?

A. My illness.

Q. Up to that time, you were satisfied with the work, weren't you?

A. My husband was working on a train to support me and the baby.

Q. Then you returned to work; didn't you?

A. Yes.

Q. Satisfied to return?

A. I had to return because I had to send my husband away.

Q. You returned in July, didn't you?

A. Yes.

Q. You worked right up to August before you did anything about seeking out a Union representative?

A. I worked until September 18th.

Q. September 18th?

A. I worked until September 18th.

Q. And all that time you didn't speak to Mr. Fainblatt at all?

A. No.

Q. About it?

A. No.

Q. You just continued on your operations, didn't you?

A. Yes.

Q. You didn't speak to Ruby?

A. No.

Q. You did continue your operations, didn't you?

A. Yes.

Q. And you worked regularly forty hours a week, you say?

A. Yes.

Q. Did you work then from July on up to September 18th, right?

A. Yes.

Q. Never speaking to Mr. Fainblatt or Mr. Ruby, did you?

A. No, Ruby spoke to me once, that is all.

Q. Why didn't you complain of conditions then to Mr. Fainblatt?

A. Because it would do no good.

Q. You never tried.

A. Other girls tried before me.

Q. Just a moment—we are talking about yourself.

A. I had the experience of the other girls.

Q. Is that the only reason?

A. No.

Q. You never tried, yourself?

A. No.

Q. Who were the other girls?

A. I couldn't remember.

Q. Why don't you remember the names of those girls?

A. Suppose I can't remember.

Q. Is it because you are under oath?

A. No.

MR. MOSCOVITZ:

Mr. Examiner, I insist that counsel should not badger the witness and try to intimidate her. It seems to me that we can proceed in a more orderly manner than this.

BY MR. GIROFSKY:

Q. Or is it because of conferences with Mr. Posner.

A. No.

Q. Mr. Posner told you to go back and work un-

der those conditions and continue on for a while; didn't he?

A. Yes.

Q. And did you notify all the girls in the plant?

A. No, most of the girls were going to the Union anyway.

Q. Did you notify any of the girls to attend any Union meetings?

A. I asked—

Q. Whom?

A. I can't say whom—I can't remember all these girls.

Q. Name the girls.

A. I can't remember all the girls.

Q. Name some of them.

A. I can't.

Q. Can't name a one? Then you didn't ask any of them?

A. I did ask.

Q. Did you notify any of those girls, do you know their names here?

A. Maybe I did.

Q. Did you?

A. Maybe.

MR. GIROFSKY:

I ask that this witness be instructed to answer this question, Your Honor.

MR. MOSCOVITZ:

It might well be that this witness has persuaded somebody that worked for Mr. Fainblatt now to join the union, and if she does, that person will be dismissed. It is highly probable.

MR. GIROFSKY:

I ask that that be stricken from the record.

BY MR. GIROFSKY:

Q. Who are the girls you invited to this meeting?

A. I can't say.

Q. You didn't invite any?

A. I did invite them.

Q. You don't know?

A. I do know.

Q. Whom did you ask?

A. I can't say.

Q. Why can't you say?

A. Because I don't remember whom I asked.

Q. When was this meeting held? When Mr. Posner was selected as the representative of the girls?

A. What do you mean, the date or what time?

Q. The date?

A. That was on August 21st, I believe.

Q. August 21st. And how many girls were there?

A. Well, I would say about twenty-five.

Q. There might have been less?

A. No, there was every bit of twenty-five.

Q. It might have been more?

A. No, about twenty-five.

Q. Just twenty-five. You won't go below or above?

A. No.

Q. And who were the girls?

A. Do I have to name all of them?

Q. Yes.

A. I couldn't do that.

Q. Some of them?

A. Mary Spatt; Angelina Matteis.

Q. Yes.

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A. Margaret Hoffman; Mary Gecik; Elizabeth Gecik. Is that enough?

Q. You could name more, if you wanted to?

A. If I tried hard enough.

Q. Why couldn't you name the girls that you notified?

A. I didn't say I notified those girls.

Q. As a matter of fact, you never notified anyone?

A. Yes, I did.

Q. Any of the girls that are working at the plant at the present time?

A. Do I have to answer that question?

Q. Yes, you do.

MR. MOSCOVITZ:

I object to answering that question for the reason I gave before. I submit this witness does not have to disclose the identity of present employees who may possibly belong to the Union, because of the possibility of their discharge by the employer.

MR. GIROFSKY:

I will go on record that any girl that is employed there will not be discharged by reason of any testimony brought up at this hearing.

BY MR. GIROFSKY:

Q. Did you notify any of the girls who are now working at the plant to attend the Union meeting?

A. Yes.

Q. Who?

MR. MOSCOVITZ:

I object. I insist that that question be not answered.

MR. GIROFSKY:

I don't see why I can't elicit any testimony

from the witness when government counsel can.

TRIAL EXAMINER GATES:

I think on that one point it would be unfair to identify any girl working at the plant.

BY MR. GIROFSKY:

Q. How many of the present employees did you notify?

A. I can remember only two.

Q. They are still employed, aren't they?

A. Yes.

Q. Are they active in the Union?

A. I couldn't say.

Q. Have they attended any meetings since then?

A. No.

MR. MOSCOVITZ:

There has not been any testimony that they belonged to the Union.

MR. GIROFSKY:

Oh, yes.

MR. MOSCOVITZ:

The testimony is that they were notified, not that they belonged to the Union.

BY MR. GIROFSKY:

Q. Did they attend the meetings?

A. No.

Q. They continued working, didn't they?

A. Yes.

Q. You were working September 18th, weren't you?

A. Yes.

Q. Fay Katz was not working that day, was she, to the best of your knowledge?

A. I don't believe so.

Q. She had not been working for some time before that day, had she?

A. Yes, she was working.

Q. She was working until—

A. She was working until twelve o'clock, I think.

Q. The strike occurred at ten in the morning, didn't it?

A. Yes.

Q. Have you ever gone back to ask for employment?

A. No.

Q. You have not?

A. No.

Q. Why haven't you?

A. Because I have been through enough without going back for more.

Q. Is that the only reason?

A. What do you mean?

Q. The reason you have just given, is that the only reason you haven't gone back to work?

A. Because it is not enough to support us.

Q. Have you sought employment elsewhere?

A. Several times.

Q. Have you received it?

A. No.

Q. You are not making as much at the present time as you were before you walked out?

A. My husband is working now.

Q. I am speaking about you, not your husband. You were receiving more before you walked out than you are at the present time?

A. No, I am making more now.

Q. More now?

A. Yes.

Q. I mean you, not your husband. You just testified you are making seven dollars a week now.

A. Yes, if you mean it that way.

Q. Isn't it so, that is the only income you have, isn't that so, not counting on your husband?

A. No.

Q. You are getting that from the strike relief?

A. Yes.

Q. Who pays the strike relief?

A. The International Ladies Garment Workers Union.

Q. And is your family on emergency relief at the present time?

A. No.

Q. Have they been in the past year?

A. No.

Q. Never.

A. Never.

Q. Who called this strike meeting?

A. Us girls.

Q. Who do you mean by us girls?

A. All the girls.

Q. Name them?

A. Mary Spatt—

Q. How many girls?

A. Oh, I couldn't say.

Q. You don't know?

A. No.

Q. Who called the meeting at which Mr. Posner was authorized to represent you—

A. What do you say?

Q. Who called the meeting that was held at which Mr. Posner was decided upon as representative?

A. We did.

Q. Who is we?

A. All the girls.

Q. How many?

A. Oh, I can't say.

Q. Were all the employees of the plant there?

A. No.

Q. How many were employed?—have you paid any dues to the Union?

A. No.

(Witness excused.)

MR. MOSCOVITZ:

Mr. Examiner, am I correct in understanding that the proposed list of names that I marked for identification before is before you under advisement, and that it is going to be left with the Examiner?

TRIAL EXAMINER GATES:

The reporter will keep it.

MR. MOSCOVITZ:

In view of the fact that we will probably have to go ahead tomorrow anyway, I would like to adjourn right now.

(Thereupon at 5 o'clock P. M., an adjournment was taken until 10 o'clock A. M., February 18, 1936.)

County Court House,
Somerville, New Jersey
Tuesday, February 18, 1936.

The above entitled matter was resumed for hearing, pursuant to adjournment taken February 17th, 1936, at ten o'clock A. M.

PROCEEDINGS

TRIAL EXAMINER GATES:

If counsel are ready, we may as well proceed.

ETHEL RICE, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination

BY MR. MOSCOVITZ:

Q. What is your full name?

A. Ethel Rice.

Q. Where do you live?

A. North Branch.

Q. North Branch, New Jersey?

A. Yes.

Q. And are you employed at the present time?

A. No.

Q. Who was your last employer?

A. The Somerset Manufacturing Company.

Q. How long did you work for the Somerset Manufacturing Company?

A. About eight months.

Q. When did you go to work for the company?

A. It was in January—I don't remember whether it was the 2nd or the 3rd week.

Q. January of 1936?

A. 1935.

Q. And until what date, do you recall, did you work?

A. I worked until the first day of the meeting that we had of the Union.

MR. GIROFSKY:

I object, unless she fixes the time of that meeting.

BY MR. MOSCOVITZ:

Q. Do you recall what the date of that was?

A. August 21st.

Q. 1935?

A. 1935.

Q. And what happened to you on that date?

A. Well, that was the date that the mayor was in our place, and we girls, the floor girls, worked on the main floor and the mayor—

MR. GIROFSKY:

I wish this witness would confine her remarks to her own conduct, her own activities.

BY MR. MOSCOVITZ:

Q. You just tell me what happened to you on that day?

A. Well, I can't explain it unless I tell it that way.

Q. All right. You go ahead and explain it.

A. Well, the mayor was making the speech upstairs and we—

MR. GIROFSKY:

I object to any references to the mayor's speech. It is immaterial and irrelevant.

TRIAL EXAMINER GATES:

Objection overruled.

MR. GIROFSKY:

Exception.

A. The mayor was making the speech upstairs and we floor girls were not considered important enough to be invited, I guess, and we continued with our work, and we continued until after the mayor had finished his speech and the girls that finished their work, we went for our pay, and we worked, I believe, overtime that day and at the end of that, Mr. Fainblatt came over to Lorraine Heitz and I and he said, "I have no more work for you girls—you can go to the Union for work".

Q. He said "I have no more work for you two girls?"

A. He didn't point, he came over to us and said, "I have no more work for you two girls".

Q. Then did he say, "Go to the Union for work."?

A. Yes.

Q. What did you do then? Leave?

A. Yes.

Q. Was that the last you were employed by the company?

A. Yes.

Q. Did you ever speak with Mr. Fainblatt prior to that date about the Union?

A. No.

Q. Did you ever speak with any one of the supervisory employees of the company before that date about the Union?

A. No.

Q. When did you join the Union?

A. I was one of the girls that went with Mary Morano and Anna Santora to Mr. Posner's office, and we joined while we were there.

Q. Are you still a member of the union?

A. Yes.

Q. After going to Mr. Posner's office, and becoming a member of the union, were you actively engaged in your union work?

A. Yes.

Q. And that was during the time that you were employed by the company?

A. Yes.

Q. And by being actively engaged in union work, what do you mean?

A. Well, I tried interesting the girls in the fac-

A. Well, the skirts would be in sizes and colors and the boxes would be on the floor or in piles all along the floor, and one of the shipping clerks asked me—one of the shipping clerks told me to come over and help him, to put the skirts in the boxes, and put them in tissue paper and close them.

Q. And who was the shipping clerk?

A. Al.

Q. Are there any other shipping clerks?

A. Yes.

Q. Do you know their names?

A. They would come from New York with Mr. Sol.

Q. But Al is there?

A. Al was there.

Q. And was he one of the employees of the Somerset Manufacturing Company?

MR. GIROFSKY:

I object to this, Your Honor. How could this witness know who is employed by the Somerville and who was employed by Lee Sportswear?

MR. MOSCOVITZ:

The testimony is already in the record. I will withdraw it. Mr. Fainblatt yesterday testified that Al was an employee of the Somerset Manufacturing Company.

MR. GIROFSKY:

I don't see how that is proper.

TRIAL EXAMINER GATES:

Objection sustained.

MR. GIROFSKY:

Exception.

MR. MOSCOVITZ:

Your objection is sustained. I withdraw the question.

BY MR. MOSCOVITZ:

Q. Do you know whether or not other employees working with you have been asked from time to time to aid in shipping?

A. I object to that. I think the other employees are available. They are the best evidence.

MR. MOSCOVITZ:

The question is quite proper.

TRIAL EXAMINER GATES:

Objection overruled.

MR. GIROFSKI:

Exception.

A. I don't know. I believe I was the only one that would help Al put the skirts in the boxes besides the fellows that would come from New York.

Q. I see. And were you working on an hourly basis or were you working on a weekly salary, or what?

A. Hourly basis.

Q. Piece work, or did you get so much an hour no matter what you turned out?

A. So much an hour?

Q. At the time you were discharged, how much were you receiving an hour?

A. Twenty-five cents.

Q. And do you recall how many hours a week you were working?

A. At the time I was discharged?

Q. Yes.

A. I don't recall exactly how many hours I was working.

Q. Were you working a different number of hours each week prior to the date of your discharge?

A. I don't know what you mean.

tory during lunch hour and after work and before work.

Q. Tried to get the other employees to become associated with this organization?

A. Yes.

MR. GIROFSKY:

I think her statements are sufficient for the record, Mr. Moscovitz. I don't see why you have to emphasize them.

MR. MOSCOVITZ:

If my statements are in any way conflicting with those of the witness, I will stand corrected.

BY MR. MOSCOVITZ:

Q. Did you attend all the Union meetings?

A. Yes.

Q. What kind of work were you doing for Mr. Fainblatt?

A. Well, I trimmed, occasionally I helped fold, I helped to put the skirts and slacks into sizes. I had to ship sometimes.

Q. Sometimes, did you say?

A. Yes.

Q. You were engaged then in what Mr. Fainblatt calls production?

MR. GIROFSKY:

I object, Your Honor, I think the witness is best qualified to tell what she was engaged in.

MR. MOSCOVITZ:

I withdraw the question.

BY MR. MOSCOVITZ:

Q. Is that in the tailoring department?

A. Yes.

Q. Now, you say you ship sometimes? Was that very often?

A. No, it only happened I believe twice.

Q. Twice during the time that you were there; is that it?

A. Yes.

Q. Do you know whether or not other employees aided in shipping?

MR. GIROFSKY:

I object. If Your Honor please, Mr. Moscovitz, by his complaint in this case, has designated this girl as a member of the production unit. Now, does he wish to amend his complaint?

MR. MOSCOVITZ:

No, I don't Mr. Girofsky. It is simply that I am inquiring as best as I can into the manner in which the business is conducted. I don't care for this particular testimony to go to the question of this particular witness' work, but I am interested in knowing exactly how the business is carried on; if this witness can help in giving that information, I think we should solicit it. If she cannot, of course, she won't be able to answer it.

MR. GIROFSKY:

Then too, Your Honor please, we don't know just what shipping means, when Mr. Moscovitz asks about shipping. I think he should first lay his foundation for it, if there is one.

TRIAL EXAMINER GATES:

Proceed.

MR. MOSCOVITZ:

I will ask her about it.

BY MR. MOSCOVITZ:

Q. Before you answer that question, I would like to ask you this one: what do you mean by helping in shipping?

Q. I mean this: Would you work, say, thirty hours one week, and perhaps twenty-five another week?

MR. GIROFSKY:

I object to leading questions.

MR. MOSCOVITZ:

After all, if the witness does not show any comprehension of the question, it seems to me quite proper to lead a little. I am not telling her what to say.

TRIAL EXAMINER GATES:

Reframe the question.

A. I would work sometimes twenty-five hours or so, sometimes I would come in at ten o'clock and sometimes I would come in at one. Sometimes I would come in at ten o'clock and he would tell me to go home and come back at one o'clock, and then I would have to work until five-thirty or six, when I would come on.

Q. So your working hours were irregular?

A. Yes.

Q. How long had you been employed on that irregular basis?

A. I was employed on that irregular basis about two weeks or three weeks after I was given my cut.

Q. You received a cut?

A. Yes.

Q. Had you been making more than twenty-five cents an hour?

A. I was receiving the basis of thirteen dollars a week, that was about thirty-two and a half cents an hour.

Q. When was that?

A. That was after the N. R. A. I was given my cut after the N. R. A.

Q. Was it during the N. R. A. that you were making this thirty some odd cents an hour?

A. Yes.

Q. After the N. R. A., you were cut—that was to twenty-five cents an hour?

A. Yes.

Q. During the N. R. A., were you working regularly or irregularly, that is regular or irregular hours?

A. Sometimes during the N. R. A. I would work until half past five or so and the next day instead of coming in at eight o'clock, I would come at half past eight.

Q. Do you remember how many hours you used to work a week during the N. R. A.?

A. Sometimes forty and sometimes forty and a half, sometimes forty-one. I don't remember exactly.

Q. Would it average around that?

A. Yes.

Q. After the N. R. A., coming back again to the irregular work, could you give me an average number of hours that you worked a week?

A. Well, right after I was given my cut, the first week, I received a straight ten dollars, then after that it was irregular.

Q. But can you average the time that you worked after the N. R. A. and tell me what the average week's work in hours was?

A. I couldn't say.

Q. You couldn't say whether it was—can you give me some idea of the average weekly income you received during this irregular period?

MR. GIROFSKY:

When?

MR. MOSCOVITZ:

From the time she received her cut after the N. R. A. went out until the date of her discharge.

A. The first week I earned ten. After that I got six or seven.

BY MR. MOSCOVITZ:

Q. Did you ever make ten dollars a week again after the N. R. A.?

A. I don't believe I did.

Q. What was the lowest amount you received after the N. R. A. for a week's work?

MR. GIROFSKY:

Your Honor, this question is improper. There is no testimony that she has worked a complete week. Unless Mr. Moscovitz fixes a full week—

(Question read to the witness).

MR. MOSCOVITZ:

I will put it this way—I will withdraw that question, and put it this way.

BY MR. MOSCOVITZ:

Q. What was the lowest amount of money you received during any one week after the N. R. A.?

MR. GIROFSKY:

I object to this question unless the witness fixes the number of hours during any one week.

MR. MOSCOVITZ:

Of course, the statement of the amount would fix the hours. If she is making twenty-five cents an hour, that would be fixed.

TRIAL EXAMINER GATES:

I think she may answer.

A. After the N. R. A. went out of effect, there were girls receiving less wages than I was.

Q. Just for yourself now.

A. Since I was higher paid, I wasn't working as many hours as the other girls were.

Q. But what was the amount you received during a week, the lowest amount you received during any one week after the N. R. A.?

A. I don't remember.

Q. Well, you testified just before that you received as low as six dollars for a week?

A. That was after my cut.

Q. I am talking about after your cut?

MR. GIROFSKY:

I object.

MR. MOSCOVITZ:

That is in the testimony.

MR. GIROFSKY:

I object to this line of questioning unless she fixes the hours in any one week.

TRIAL EXAMINER GATES:

I don't see any necessity for fixing the hours. The objection is overruled.

BY MR. MOSCOVITZ:

Q. After the N. R. A., according to your testimony, you got a cut; is that right?

A. Yes.

Q. What was the smallest amount that you received in one week, if you remember?

A. It was between five and seven, I couldn't say more than that.

Q. Between five and seven dollars for a week.

MR. GIROFSKY:

For a week? That was not the question. The question was how much she received in any one week. Does that refer to that sum of money—does that refer to payment for a week's work?

TRIAL EXAMINER GATES:

That is clear on the record. Please proceed.
BY MR. MOSCOVITZ:

Q. And the most that you received was ten dollars?

A. Yes.

Q. After your discharge, did you ever go back again to Mr. Fainblatt for work?

MR. GIROFSKY:

I object to this, Your Honor, there is no testimony that she was discharged.

TRIAL EXAMINER GATES:

Yes there is. She may answer.

MR. GIROFSKY:

The only testimony here from the witness is her own testimony that she was told not to come in. There is no testimony that she was discharged.

TRIAL EXAMINER GATES:

Very well. Objection sustained. Please reframe the question.

BY MR. MOSCOVITZ:

Q. What was the last date you worked for Mr. Fainblatt?

A. August 21st.

Q. What happened to you on that date?

MR. GIROFSKY:

I object. She has already answered.

TRIAL EXAMINER GATES:

Objection sustained.

BY MR. MOSCOVITZ:

Q. And after you left on the date already referred to, did you go back to Mr. Fainblatt and ask for more work?

A. The following day we went for our pay, Lorraine and I.

MR. GIROFSKY:

I object to any references to any other girl.

TRIAL EXAMINER GATES:

It doesn't make any difference: Please proceed.

MR. GIROFSKY:

Exception.

A. And we asked for our pay. Mr. Fainblatt—

MR. GIROFSKY:

Who is we?

A. I just said Lorraine—

MR. GIROFSKY:

I have to know for cross examining.

MR. MOSCOVITZ:

You can find out on cross examination.

BY MR. MOSCOVITZ:

Q. What were you saying?

A. We asked Mr. Fainblatt if there was any work for us because the day we were fired we were sure we would have to come in the next day because there was so much work and when we came back, he said, "You see, we have no girls working". He opened the door and we knew the girls were on the third floor.

MR. GIROFSKY:

What she did is being asked. That is not responsive.

TRIAL EXAMINER GATES:

Please continue.

A. He said, "You see, I have no more work for you—none of the girls are here". And the girls were up on the third floor.

Q. Then what did you do?

A. We took our pay and we went home.

Q. Did he make any reference to you at that time about the Union?

A. No.

Q. Was that the last time you went back to see Mr. Fainblatt?

A. Well, the next week I went back for the rest of my pay for that week and I asked for my smock and went home.

Q. And that was the last conversation you had with Mr. Fainblatt?

A. The last week I went in for my pay I didn't see Mr. Fainblatt. I saw Miss Lee.

Q. Who is that?

A. Mr. Fainblatt's daughter.

MR. GIROFSKY:

I object to that. There is no testimony that that is her name.

MR. MOSCOVITZ:

The witness is giving the testimony.

TRIAL EXAMINER GATES:

Objection overruled.

BY MR. MOSCOVITZ:

Q. Is Miss Lee the daughter of Mr. Fainblatt?

A. So she—yes.

Q. That is what you girls called her?

A. Yes.

Q. That is the name that she was known by in the plant?

A. Yes.

MR. GIROFSKY:

I object to that.

BY MR. MOSCOVITZ:

Q. Didn't Miss Lee work with you girls?

A. No. I never saw her working with us.

Q. What did she used to do, do you know?

- A. The time I was in, she was in the office.
Q. Is that where she always was—in the office?
A. I don't know.
Q. The times that you saw her was in the office?
A. Yes.
Q. Had you ever seen her before at any time?
A. I believe I saw her once before downstairs.
Q. In the plant?
A. Yes.
Q. On the floor?
A. I believe she was talking to Mr. Fainblatt at the time.

Cross Examination

BY MR. GIROFSKY:

Q. Mr. Fainblatt's daughter's name is Fainblatt?
Isn't it?

A. She was known as—

Q. Isn't it?

A. I don't know. I have heard rumors that she is married.

Q. Her name is not Miss Lee—yes or no.

A. I don't know.

Q. And you were not in the office very often, were you?

A. We weren't allowed.

Q. And you didn't see her in the office very often, did you?

A. This once that I went for my pay, I did.

Q. Once in all the time that you worked there; isn't that right?

A. Well, the other time I saw her I believe was in the office too.

Q. Then, since January up to August, you saw her twice in the plant; is that right?

A. I believe that is all I did see her, I am not sure though.

Q. That is your best recollection?

A. Yes.

Q. Are you sure of all your testimony that you have given?

A. Yes.

Q. Or is it the best recollection you have?

A. Well, I have told to the best of my knowledge.

Q. Not a certainty, however; is it?

MR. MOSCOVITZ:

Well, Mr. Examiner, how far does the witness have to be broken down? She said she gave it to the best of her knowledge. It seems to me it is the best anybody could give.

MR. GIROFSKY:

She said she is not certain about it.

MR. MOSCOVITZ:

She did not say she was uncertain about it.

TRIAL EXAMINER GATES:

Please continue the examination. I am getting tired of this bickering.

BY MR. GIROFSKY:

Q. Now, when was the last day you worked?

A. The last day? August 21st.

Q. August 21st. Are you sure of that date, Miss Rice?

A. Quite sure.

Q. You are not certain of it, are you?

A. Well, I said I was quite sure.

Q. That is to your best recollection, isn't it?

A. Yes.

Q. Records were kept of your number of hours, days of work, weren't they?

A. Well, the only record that could have been kept was by the time card and not always would I punch it.

Q. You always punched it?

A. Not always would I punch it.

Q. Why didn't you punch it?

A. Well, when I worked overtime the head floor girls would take the card and punch it ahead of time so we could work overtime but the times were punched at the time we were supposed to quit.

Q. How often would that occur?

A. Quite often.

Q. How long before August 21st would it occur?

A. Well, it only occurred during the N. R. A. time. After the N. R. A. it didn't occur.

Q. Did you permit her to take the card?

A. We were not permitted to leave our work.

Q. Did you permit her to take your card?

A. Yes.

Q. What work were you engaged in at the time she first took the card?

A. Floor work.

Q. What do you mean by floor work?

A. Clipping and folding, lacing, things of that sort.

Q. And you were an operator there at one time?

A. No, never.

Q. You were an operator there, weren't you?

A. No, I was not.

Q. Did you ever try to operate?

A. No.

Q. How much did you receive the last week, in your last pay?

A. I don't know.

Q. You don't know?

A. No.

Q. How many days in the last week that you were there did you work?

A. In the last week I worked Monday, Tuesday and Wednesday but I don't know how many hours it was.

Q. Now, Miss Rice, can you say you worked two hours the first day of the last week?

A. No, I don't know.

Q. And can you say you worked two hours the second day of the last week?

A. I never worked two hours a day. I always worked more.

Q. And you were paid twenty-five cents an hour for your work; is that right?

A. Yes.

Q. And for the number of hours that you worked, you always received your pay for the number of hours that you actually worked; didn't you?

A. Yes.

Q. And now, let's take the week preceding the last week that you were there, the week preceding the last week there. How many hours that week did you work?

A. I can't very well remember how many hours I worked.

Q. You can't. And how many days in a week did you work?

A. I don't remember.

Q. You can't. And how many days in a week did you work?

A. I don't remember.

Q. And how much did you receive that week?

A. I guess it was between five and seven.

Q. Do you know?

A. I couldn't be positive of my pay at that time.

MR. MOSCOVITZ:

She is giving her best recollection.

MR. GIROFSKY:

Now, just a moment, Mr. Moscovitz.

BY MR. GIROFSKY:

Q. You don't know how many hours you worked that week, do you?

A. No.

Q. Let's take the week before that. How much did you receive?

A. I don't know.

Q. You don't know. And how many hours in that week did you work?

A. I don't know.

Q. Now, did you work the week before that—we are back four weeks before you left, the fourth week before you left. Do you remember how many days you worked then?

A. I believe that was about the time I was given my cut and that was the only week that I earned straight ten dollars.

Q. Are you sure of that Miss Rice?

A. I am not sure whether that is the week or not, but it was around that time.

Q. You are not sure?

A. No.

Q. And you are no more sure of that than you are of your knowledge concerning your average weekly wages, are you?

A. I don't understand you.

Q. You know you are no more sure of the amount of money you received on the fourth week

preceding your departure from the plant than you are of the amount of average wages you received from July down to the day you left. Yes or no.

A. I can't answer that.

Q. Let's take the fifth week before you left the employ, or left the plant, how many hours in that week did you work?

A. You mean the fifth week before I was discharged.

Q. No, before you left the employ.

A. I don't remember.

Q. And how much did you receive in that week?

A. I don't remember.

Q. You don't remember. And your failure to remember, is it just an accommodating answer?

A. What was that?

Q. Your failure to remember, is it just an accommodating answer for the purpose of this examination?

A. No.

Q. Let's take the sixth week preceding?

A. I don't remember.

Q. You don't know?

A. I don't remember.

Q. Then you don't know in the last six weeks how much you received, do you?

A. I am no book fiend.

Q. And yet you have given counsel an average weekly wage?

A. I gave an average—

Q. Yes or no?

A. Yes.

Q. Now you went to Plainfield to join a union, didn't you?

A. Yes.

Q. And who did you go with?

A. Anna Santora and Mary Morano.

Q. Just the three of you?

A. Yes.

Q. You went there of your own accord; isn't that right?

A. Yes.

Q. And when you went to Plainfield, where did you go in that city?

A. To Mr. Posner's office.

Q. And were you there at Mr. Posner's invitation?

A. No.

Q. You went there voluntarily?

A. On my own accord.

Q. No one compelled you to go there, did they?

A. Why should they.

Q. That's right. And did you sign an application at Mr. Posner's office?

A. Yes.

Q. Did Mr. Posner invite you to sign the application?

A. No.

Q. Who else was present at the time?

A. The two girls and Mr. Posner, besides myself.

Q. Did you pay any dues upon signing the application?

A. No.

Q. Have you ever paid any dues?

A. No.

Q. And have you ever received any notices from the Union that you were accepted in the Union, a notice in written form?

A. No.

Q. Now, you went back to the—was that while you were working for Mr. Fainblatt?

A. Yes.

Q. Did you go to Plainfield while you were working for Mr. Fainblatt?

A. Yes, after working hours.

Q. On what day?

A. I don't know if it was a Thursday or a Friday.

Q. Can you fix a date?

MR. MOSCOVITZ:

Date for what?

MR. GIROFSKY:

The date that she went there.

MR. MOSCOVITZ:

If it will help Mr. Girofsky, I can give him the application blank that has the date on it.

MR. GIROFSKY:

I want this witness' statement.

A. It was either the 14th or the 15th.

Q. What time of the day was it?

A. After working hours.

MR. MOSCOVITZ:

Mr. Examiner, I think perhaps the hearing could be expedited if we could avoid a lot of these immaterial details.

TRIAL EXAMINER GATES:

The witness may answer.

A. It was between five and a quarter after six.
BY MR. GIROFSKY:

Q. When did you have the first meeting in your Union among you three girls?

A. What do you mean, among us three girls.

Q. You were the only three girls who were members of the Union; isn't that right?

A. We were the first three to start.

- Q. When did you hold your first meeting?
A. August 21st.
Q. Where?
A. Harmony Hall.
Q. Where is that?
A. Raritan.
Q. Who was present?
A. Most of the girls that had signed, and had interest in signing, and Mr. Posner.
Q. Who were they?
A. I don't think I could point them all out.
Q. You can't?
A. No.
Q. Did you know all the girls there?
A. Most of them.
Q. Well name those you knew.
A. There was—
Q. Just look at me.
A. I have to look at their faces.
Q. Just look at me and answer that question.
A. By looking at your face I couldn't know the names of the other girls.
Q. And by looking at the faces of others, you could pick them out at random?

MR. MOSCOVITZ:

Wouldn't Mr. Girofsky permit her to refresh her recollection by looking at the faces of the girls?

MR. GIROFSKY:

No, this is all matters of her own knowledge.

A. There was Angelina Matteis. There was Marjorie Hovan. I don't remember all of them.

BY MR. GIROFSKY:

- Q. You don't know, do you?
A. I don't remember.

MR. MOSCOVITZ:

Mr. Girofsky, will you stop standing in the face of this witness.

BY MR. GIROFSKY:

Q. You don't know, do you?

A. I don't remember.

Q. You don't know, do you?

A. I said I don't remember.

Q. Is that the best answer you can give?

A. Yes.

MR. MOSCOVITZ:

The answer is "I don't remember".

BY MR. GIROFSKY:

Q. Were all the girls present actually working at the plant on the day of the meeting?

A. I don't understand the question.

(Question read to the witness).

A. To the best of my knowledge they were.

Q. Are you sure of it? Would you say they were? Yes or no.

MR. MOSCOVITZ:

I wish Mr. Girofsky wouldn't jump down the throat of the witness.

MR. GIROFSKY:

I am three seats from her.

THE WITNESS:

You have a funny understanding of three seats.

MR. GIROFSKY:

I didn't ask you. You are under oath to give testimony here.

MR. MOSCOVITZ:

She is giving it.

BY MR. GIROFSKY:

Q. Do you know if all the girls employed were

actually working on the day of the meeting, yes or no?

A. To the best of my knowledge.

Q. Do you know?

TRIAL EXAMINER GATES:

She answered that.

MR. GIROFSKY:

She has not. She said to the best of her knowledge. I asked her whether or not they were working. It is not responsive.

MR. MOSCOVITZ:

She said to the best of her knowledge.

MR. GIROFSKY:

What—that they were not working?

A. They were.

BY MR. GIROFSKY:

Q. How many were at that meeting?

A. I would say about—

Q. How many?

A. I can't say how many—I did not count them.

Q. You don't know, do you? You were one of the organizers; weren't you?

A. Yes.

Q. What is the last day you were at the plant?

A. You mean working?

Q. Yes.

A. August 21st.

Q. How many hours did you work on that day?

A. I don't remember.

Q. You don't know?

A. I don't remember.

Q. And when did you next go back to the plant?

A. The following day, for my pay.

Q. You went back for your pay? And you left your smock at the plant; didn't you?

A. Yes.

Q. And when did you go back and take the smock?

A. The following Thursday.

Q. The following Thursday. That was how many days after you were there before?

A. About a week.

Q. About a week. You left your belongings there—your work garments?

A. I had forgotten them.

Q. Now you had another meeting, didn't you?

A. Yes.

Q. And where was that held?

A. The same place.

Q. When?

A. About the 28th of August.

Q. Did you pay for the use of that hall?

MR. MOSCOVITZ:

Mr. Examiner, if Mr. Girofsky would like to know, I understand that the International organization paid for the use of the hall.

MR. GIROFSKY:

I object to that, Your Honor, this witness has been asked a question. Unless you want to take the stand, Mr. Moscovitz.

MR. MOSCOVITZ:

You want to know and I will tell you.

MR. GIROFSKY:

Now, the witness has heard the suggestion.

A. It was no suggestion. I knew the International paid for the hall.

BY MR. GIROFSKY:

Q. How did you know?

A. Because we couldn't pay for the hall.

Q. Is that the best answer you can give?

A. ² Yes.

Q. Did you see them pay for it?

A. No.

Q. Did they pay for it by cash or check?

A. I don't know.

Q. You don't know whether the International paid for it or not, as a matter of fact, do you?

A. We wouldn't have got the hall the next time if it was not paid for.

Q. How many were at the meeting?

A. I don't remember exactly.

Q. You were one of the organizers?

A. Yes.

Q. You were one of the officers?

A. We didn't have any officers.

Q. You were one of those instigating the union with Mr. Posner?

A. Not with Mr. Posner.

Q. With Mr. Ross?

A. We asked Mr. Ross if he would help us.

Q. He was not in the employ of the company at that time, was he?

A. At what time?

Q. At the time you went to Plainfield the first time?

A. No.

Q. And he was not in the employ of the company when you had your second meeting, was he?

A. No.

Q. Now, who was at that meeting?

A. What do you mean, the girls?

Q. Yes.

A. I told you before, I don't remember all of them.

Q. You don't remember.

MR. MOSCOVITZ:

All of them, she said.

BY MR. GIROFSKY:

Q. How many were there?

A. I couldn't say how many. I could say approximately though.

Q. That's all. You said you couldn't say. Who else was present at the meeting besides the girls?

A. Besides the girls?

Q. Yes.

A. Mr. Posner.

Q. And there were others at the meeting that were not employed at the Somerville or the Somerset Manufacturing plant, isn't that right?

A. I don't know.

Q. You don't know. Were any dues paid at that meeting?

A. No.

Q. Are you being paid at the present time?

A. At the present time, yes.

Q. By whom?

A. By Mr. Posner.

Q. Who is furnishing the money to Mr. Posner?

A. The International Ladies Garment Workers Union.

Q. How much a week have you made since you have been with the picketing group?

A. I have been getting about seven dollars.

Q. Seven dollars. And how many hours a day do you work?

A. We picket.

Q. You don't call that work, do you?

A. Well, working for our own benefit.

Q. That is a lot of fun to you, isn't it?

A. What do you mean "fun"?

Q. Now, did you give notice to the girls that a meeting would be held?

A. I told them.

Q. Now, whom did you tell?

A. You mean you want me to name them?

Q. Yes.

A. I couldn't name them.

Q. Did you give notice to all the girls?

MR. MOSCOVITZ:

—What difference does all this testimony make in this case. I mean, it seems to me if Mr. Girofsky would explain what he is driving at, I wouldn't raise any objection.

MR. GIROFSKY:

I will lead up to that point. I am trying to do that, I think.

BY MR. GIROFSKY:

Q. What is the answer to the last question?

A. No, I did not.

Q. How many attended that meeting?

A. I don't remember.

Q. And that was the meeting when Mr. Posner was chosen as representative of the employees of the plant; is that right?

A. Yes.

Q. And you don't know how many girls were there?

A. I could give an approximation.

Q. Can you name them?

A. No.

Q. Now, your duties at the plant were carrying material to the operators—part of your activities?

A. I never carried material to the operators. I brought them upstairs to the tables.

Q. You laid the material on the tables?

A. The material would be on the table and if I needed the table, I would bring the material upstairs and put it on the tables so I could use it.

Q. You were not known as a shipping clerk, were you?

A. No.

Q. And you pressed?

A. No.

Q. Did you fold garments?

A. Occasionally.

Q. And you know Sol Fainblatt; don't you?

A. Yes.

Q. He did the shipping at the plant; didn't he?

A. Alone?

Q. To the best of your knowledge?

A. No, he used to have fellows helping him.

Q. I see. Fellows helping him. And you placed the garments within a box, didn't you?

A. Not one box.

Q. Boxes?

A. Yes.

Q. And that was the last act that you had to do with a garment; isn't that right?

A. Well, he would have the order and tell me which skirts to put in and I would put them in and close the box.

Q. And when you packed—in other words, these garments in the boxes—you considered that shipping; isn't that right?

A. Yes.

Q. That is all.

Redirect Examination

BY MR. MOSCOVITZ:

Q. You testified before that, at the time of your discharge, you were busy?

A. Yes.

Q. And did you have a lot of work to do then? Did you have a lot of work to do?

MR. GIROFSKY:

I object to this. This is improper redirect. Mr. Moscovitz has gone all over the phases of the activities of the plant.

MR. MOSCOVITZ:

It is very important in view of Mr. Girofsky's Answer in this case.

TRIAL EXAMINER GATES:

Objection overruled.

MR. GIROFSKY:

Exception.

A. I believe we worked overtime that day.

MR. GIROFSKY:

What day is this?

A. August 21st, and there was a pile of work there, and I said to Lorraine, "Gee", I said, "we will have to come in about seven o'clock tomorrow—there is so much work".

BY MR. MOSCOVITZ:

Q. Don't pay any attention to that conversation over there, just answer the questions. Now, what were you called? There has been testimony about your having done this type of work, and a little of this type of work, and so on, but what was your actual work in the plant?

MR. GIROFSKY:

I object to this, Your Honor, he has gone into

this quite thoroughly on his direct examination. It is not proper redirect.

TRIAL EXAMINER GATES:

Well, that may be. However, I think we ought to have it in the record.

MR. GIROFSKY:

What others might call her is immaterial.

MR. MOSCOVITZ:

It seems to me she has a classification. I would like to know the classification. Was she a trimmer, or a finisher, or what?

BY MR. MOSCOVITZ:

Q. What were you?

A. I was a floor girl.

Q. Is that the only name you went by?

A. I believe I was called a trimmer and a cleaner to.

Q. I see. And as a trimmer, you use a scissors?

A. Yes.

Q. Now, at the time you attended the meeting in Raritan with Mr. Posner, referred to by Mr. Girofsky on cross examination as the second meeting, approximately how many employees attended?

MR. GIROFSKY:

I object to this, Your Honor. This is a matter in issue. The number of girls at the meeting is in issue and unless he can definitely fix the number, it is immaterial, irrelevant.

TRIAL EXAMINER GATES:

I don't think it is immaterial.

MR. GIROFSKY:

Improper.

TRIAL EXAMINER GATES:

She can tell.

MR. MOSCOVITZ:

I would like to know if she knows. Mr. Girofsky asked her the question. She said she didn't know the exact number.

TRIAL EXAMINER GATES:

The witness may answer.

A. There were between twenty-five and thirty-five.

BY MR. MOSCOVITZ:

Q. That was the second meeting?

A. Yes.

Q. Then there was a meeting after that?

A. Yes.

Q. Do you have some idea how many were there?

MR. GIROFSKY:

I object to that, for the same reason.

TRIAL EXAMINER GATES:

Same ruling.

MR. GIROFSKY:

And the additional reason that the witness cannot fix the names and identity of the person there:

MR. MOSCOVITZ:

We will take care of that later.

BY MR. MOSCOVITZ:

Q. Approximately how many?

A. I would say—

MR. GIROFSKY:

This is not the best proof, on his own admission.

BY MR. MOSCOVITZ:

Q. Answer the question.

A. There was about twenty-five—thirty-eight or so.

TRIAL EXAMINER GATES:

I would like to get this straight. What counsel is referring to as first, second and third meetings, I would like to get that straight.

MR. MOSCOVITZ:

The reference is already in the record, Mr. Examiner, as to first, second, and third meetings.

TRIAL EXAMINER GATES:

None of those refer to the meeting of the three girls and Mr. Posner; is that correct?

MR. MOSCOVITZ:

Yes.

TRIAL EXAMINER GATES:

Meetings of the employees.

MR. MOSCOVITZ:

Right.

BY MR. MOSCOVITZ:

Q. You testified in answer to Mr. Girofsky's question that you always received pay for the number of hours that you actually worked; is that right?

A. Yes.

Q. You also testified that the forelady, during the time prior to your cut, handled your cards for you?

A. She was the head girl of the floor. I don't think she was called the forelady.

Q. What was her name?

A. Jane.

Q. Jane. What do you mean when you say she handled the cards for you?

A. There was work that had to go out and we had to have it sent out. The work was ready and it was not cleaned, and folded. She would take the

cards upstairs and punch them and we would continue working.

Q. That is, your time card?

A. Yes.

Q. And if you worked five hours that day, for instance, would she punch the five hours?

MR. GIROFSKY:

I object to that, Your Honor, telling what someone else did.

MR. MOSCOVITZ:

I am asking her if she knows.

TRIAL EXAMINER GATES:

I think the question is proper. She may answer.

A. If there was overtime to be worked, then she punched the cards; otherwise we would punch them.

Q. She only punched them when it was overtime?

A. Yes.

Q. Would she punch it showing the overtime you worked?

A. The bookkeeper would do it.

Q. Would you be notified of the overtime you worked?

A. I would keep my own record.

Q. You would be paid for it?

A. Yes.

Q. I show you a card and ask you what it is?

A. That is my application blank.

Q. That you signed for the Union?

A. Yes.

MR. MOSCOVITZ:

Mark it for identification, please.

(Document referred to marked for identifica-

tion, Board's exhibit number three, witness Rice).

BY MR. MOSCOVITZ:

Q. I show you Board's exhibit number three, marked for identification. Do you say that is your application blank to the Union?

A. Yes.

Q. In whose handwriting?

A. This is in Mr. Posner's handwriting and it is signed by me.

Q. Did you make it all out or did he make it all out?

MR. GIROFSKY:

The witness has already answered the question, and I object to it.

BY MR. MOSCOVITZ:

Q. How about the other side?

A. He asked the questions and I answered them.

Q. Is that your signature?

A. Yes.

MR. MOSCOVITZ:

I introduce that.

MR. GIROFSKY:

I object to this offer, Your Honor, it has not been properly proved. The witness has testified that she has signed this card, but to the other features of it, it seems it was in the handwriting of someone else.

MR. MOSCOVITZ:

She also testified that she answered the questions which he asked her.

TRIAL EXAMINER GATES:

I think it is clear on that.

MR. MOSCOVITZ:

It seems to me that it makes no difference.

Mr. Examiner. The witness has testified that Mr. Posner asked her questions, he wrote down the questions and she signed the card. It seems to me a regular procedure.

MR. GIROFSKY:

I am accepting my privilege of cross examining this witness on this card for the purposes of my objection.

Recross Examination

BY MR. GIROFSKY:

Q. Do you know you are under oath?

A. I do.

Q. When did you sign this card?

A. When?

Q. Yes.

A. In Mr. Posner's office.

Q. When?

A. Either the 14th or the 15th.

Q. Do you know?

A. I am not sure.

Q. Did you sign any other cards or applications?

A. No.

Q. Did you write out this entire card?

A. Mr. Posner—

MR. MOSCOVITZ:

Witness has already testified.

TRIAL EXAMINER GATES:

The witness has testified. The question is not permitted.

MR. GIROFSKY:

This is examination, Your Honor, and I believe it is proper.

MR. MOSCOVITZ:

When does examination stop?

MR. GIROFSKY:

All right.

BY MR. GIROFSKY:

Q. Did you write out this entire card on the face?

A. I signed my name. Mr. Posner asked me questions and I answered them.

Q. Nothing more than that?

A. What do you mean "nothing more"?

Q. You didn't sign anything more than your name to this card?

MR. MOSCOVITZ:

The witness has testified four times on this.

Mr. Girofsky, and I ask that it be stopped.

BY MR. GIROFSKY:

Q. You signed nothing more than your name to this card; is that right?

MR. MOSCOVITZ:

That is the answer "yes".

A. Yes.

Q. Will you write your name for me, please?

(Witness does so).

Q. Didn't you write your name at the top too?

A. No.

Q. Did you write that name?

A. Yes.

Q. Did you write this address?

A. No.

MR. GIROFSKY:

I object to the offer, if Your Honor please. This card is offered as a card in evidence, prepared by someone else, partly by someone else.

as appears by the examination. I feel that the card has not been completely qualified.

TRIAL EXAMINER GATES:

It is admitted.

MR. GIROFSKY:

Exception.

(Document referred to received in evidence, marked Board's exhibit number three, Witness Rice).

MR. GIROFSKY:

Will you please remain in court, Miss Rice?
(Witness excused).

TRIAL EXAMINER GATES:

We will have a five-minutes' recess.

AFTER RECESS

LORRAINE HEITZ, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination

BY MR. MOSCÓVITZ:

Q. Where do you live, Miss Heitz?

A. 189 West Main Street, Somerville, New Jersey.

Q. Are you employed at the present time?

A. No, I am not.

Q. Who was your last employer?

A. Mr. Fainblatt, Somerset Manufacturing Company.

Q. And have you been employed since your last work with Mr. Fainblatt?

A. No, I have not.

Q. When did you go to work for Mr. Fainblatt?

A. April 17, 1935.

Q. What kind of work did you do?

A. I worked as a floor girl, a trimmer.

Q. Trimmer?

A. Yes.

Q. What does a trimmer do?

A. Well, we didn't only trim, we trimmed a garment and sometimes I folded, sometimes I buttoned up work and laid them in sizes. Put them in sizes, trimmed them and well, whatever had to be done, inspected them, if there was anything wrong with them. We sent them back upstairs.

Q. And is trimming work that is done preliminary to the final job?

A. It is done before the folding.

Q. And shipping?

A. Yes.

Q. And is it done before sewing or after sewing?

A. After sewing.

Q. Does that put the garment in its finished condition?

A. Yes. Then it is all finished unless we have to put belts or bows on a dress or something of that sort.

Q. I see. And until what date did you work for Mr. Fainblatt?

A. Until August 21st.

Q. When did you join the Union?

A. On August 21st.

Q. You joined the Union August 21st?

A. Yes.

Q. And that was the last day you worked?

A. Yes.

Q. Before joining the Union, did you attend any union meetings?

A. The first meeting was on August 21st, and that is when I joined.

Q. Now, before that meeting, had you spoken with Mr. Posner?

A. No.

Q. Were you one of the girls that went to see Mr. Posner?

A. No, I knew about them going. I had spoken to them about it, but I didn't go with them when they left.

Q. You were interested in an organization?

A. Yes.

Q. You were interested in seeing an organization come about?

A. Yes.

MR. GIROFSKY:

I object to that.

MR. MOSCOVITZ:

The question is answered.

MR. GIROFSKY:

Exception.

BY MR. MOSCOVITZ:

Q. Had you ever spoken with anyone of your supervisory bosses about the Union before you joined?

A. No, I did not. I was questioned by the foreman.

MR. GIROFSKY:

The answer has already been given, Your Honor.

Q. Did any one of your bosses speak to you about the union before August 21st?

A. Mr. Ruby, the foreman.

Q. Any others?

A. No, that is all.

Q. What did Mr. Ruby say to you?

MR. GIROFSKY:

I object to this, Your Honor, unless counsel fixes a date.

MR. MOSCOVITZ:

I will withdraw the question.

BY MR. MOSCOVITZ:

Q. Do you remember when it was that Mr. Ruby spoke with you?

A. I don't know the exact date, but it was about a week before the first meeting.

Q. A week before August 21st?

A. Yes.

Q. Was it in the plant?

A. Yes.

Q. Was it during working hours?

A. Yes, it was.

Q. Were you working at the time?

A. Yes.

Q. Were any other girls with you?

A. No, I was taking—

Q. You were alone?

A. I was on the elevator.

Q. I see, and did Mr. Ruby approach you?

A. Yes.

Q. What did he say?

MR. GIROFSKY:

I object to this question as improper. It is hearsay.

TRIAL EXAMINER GATES:

I don't think it is hearsay. Objection overruled.

MR. GIROFSKY:

It was not said in the presence of respondents.

TRIAL EXAMINER GATES:

No difference. Objection overruled.

MR. GIROFSKY:

Exception.

A. I had a load of work, taking it down on the elevator and Mr. Ruby came over and stopped the elevator and he said he wanted to ask me a few questions. He asked me if I had heard anything about the girls joining a union and he asked me if I was interested in it, and he asked me several questions about the union and I told him I had no information to give him. He told me that I don't need to be afraid that I wouldn't be sorry for any information given to him, and I told him I was sorry, that I had no information for him, and he said, "All right, go on with your work".

Q. Just what does Mr. Ruby do in the plant, if you know?

MR. GIROFSKY:

I object to any testimony pertaining to Ruby's activities. It is entirely hearsay.

MR. MOSCOVITZ:

It is not hearsay, if this witness knows.

MR. GIROFSKY:

It is immaterial, irrelevant, has no bearing on the case.

TRIAL EXAMINER GATES:

I think it is very material. Objection overruled.

MR. GIROFSKY:

Answer:

A. Mr. Ruby didn't have anything to do with

my work. He was foreman to the girls that operated the machines.

Q. He was their boss?

A. Yes.

Q. He supervised their work?

A. Yes, he and Miss Evans.

Q. He and Miss Evans?

A. Yes.

Q. Now, by supervising their work, just what do you mean?

A. Well, he gave them the work to do. He told them how to do it, what to do.

Q. Now was there anyone in the plant, above Mr. Ruby, aside from Mr. Fainblatt, to your knowledge?

A. No.

Q. Then, he was your boss, with the exception of the other boss, Mr. Fainblatt?

A. Yes.

Q. Now, after you spoke with Mr. Ruby, or after he spoke with you, which you placed in the testimony as a week prior to August 21st, did you have any other conversation with either Mr. Ruby, the forelady, or Mr. Fainblatt?

A. Not pertaining to the Union.

Q. Not pertaining to the Union. Was it the day that Mr. Ruby spoke with you about the Union, the day that the mayor spoke at the plant?

A. It was either the day that he spoke or shortly before, maybe a day or two before the mayor spoke.

Q. I see. Then it was during this period which appears to have been a concentrated drive of some sort?

A. Yes.

MR. GIROFSKY:

I object to counsel's remarks and counsel's leading question, and ask that it be stricken.

MR. MOSCOVITZ:

Of course, the question has been answered.

TRIAL EXAMINER GATES:

I will let that stay, but I caution counsel to avoid that.

MR. GIROFSKY:

Exception.

BY MR. MOSCOVITZ:

Q. What happened on August 21st, 1935?

A. Well, several things happened. The mayor made a speech.

MR. GIROFSKY:

I object, unless this question is limited to this witness, limiting the question to the activities of this witness.

BY MR. MOSCOVITZ:

Q. Of course, insofar as you know yourself.

(Question read to the witness).

TRIAL EXAMINER GATES:

Re-phrase your question to conform with the objection.

BY MR. MOSCOVITZ:

Q. Anything happen to you on August 21st, 1935?

A. Well, I was discharged from Mr. Fainblatt's employ, for one thing.

Q. Anything else?

A. I saw the mayor come in and Mr. Hawley, and they went upstairs, but we were not invited to go up.

Q. Who do you mean?

A. The floor girls.

Q. How many of them?

A. I don't remember the exact number that were working, but Ethel Rice, Sophie Ziegler, Mary Grill, and myself, and I think that was all that were working that day.

Q. I see. You were not asked to go up?

A. No.

Q. The balance of the workers there were invited?

A. Yes.

Q. Now, you say that Mr. Fainblatt discharged you on that day?

A. Yes.

Q. Will you explain to the Trial Examiner what took place at that time?

A. Well, we had to work overtime that night.

Q. You were busy?

A. Quite busy.

Q. Yes.

A. And we worked until around six o'clock, I think, and Mr. Fainblatt walked over to us and at that time—

MR. GIROFSKY:

Your Honor, please, I ask that the witness be instructed to confine her answers to her own experiences.

TRIAL EXAMINER GATES:

I think that is her experience.

MR. MOSCOVITZ:

She was there with other people apparently.

MR. GIROFSKY:

She has not designated the other persons.

BY MR. MOSCOVITZ:

Q. What other persons were with you?

A. Ethel Rice and myself.

Q. And Mr. Fainblatt came over?

A. Yes, Mr. Fainblatt came over to us and previous to that we had been coming in, well, sometimes nine o'clock in the morning, sometimes ten, sometimes we wouldn't come in until noon time, so we usually formed the habit of asking him the night before we left, what time to come in on the next day, so when he came past, Ethel Rice said, "Mr. Fainblatt, what time shall we come in in the morning?"—meaning Ethel Rice and myself, and he looked at us and said, "I am sorry, girls, there is no work for you", and we looked at him because there was more work there than for three months, so we asked him why not, and he said, "I have no more work for you girls, you will have to go to the Union". So we looked at him and we walked out. The next day we went back for our pay, and when we went there I said, "Mr. Fainblatt, have you any work for us?" and he said, "I told you girls once before I have no more work for you." and he opened the door for us and said, "See, there is nobody working here," and when we came in to the place the girls up on the third floor were waving out of the windows to us.

Q. So they were girls who had previously been working on the other floor?

A. Yes, they had been working on the ground floor.

Q. The day you came in they were on the third floor?

A. Yes.

Q. And before you came in, they waved to you?

A. Yes.

Q. So when Mr. Fainblatt said to you, "You see, girls, nobody is working on this floor," he was right in saying that?

A. Yes, there was no one working on the floor, but they were working.

MR. GIROFSKY:

I think this testimony is sufficient for the record without counsel substituting for her.

TRIAL EXAMINER GATES:

The record is clear.

MR. GIROFSKY:

Exception.

BY MR. MOSCOVITZ:

Q. And after he opened the door and showed you the space, did he say anything further to you?

A. No, he did not.

Q. Make any further reference to the Union?

A. No.

Q. You left?

A. Yes.

Q. Did you come back any time after that to see Mr. Fainblatt?

A. We had to go back once more for our pay, for the three days of that week that we had worked, that was the following Thursday.

Q. Did you go to see Mr. Fainblatt?

A. He was not there.

Q. Any further reference by anyone else to the union to you?

A. We were paid by Miss Lee.

Q. Who is Miss Lee?

A. Mr. Fainblatt's daughter.

Q. You worked for Mr. Fainblatt during the

N. R. A.?

A. Yes.

Q. Were you doing the same kind of work?

A. Yes, I was.

Q. Were you working on an hourly rate or a weekly wage?

A. Hourly rate.

Q. What was your hourly rate?

A. Twenty-four cents an hour.

Q. During the N. R. A.?

A. Yes.

Q. How many hours were you working?

A. Forty, that is, we worked overtime sometimes too.

Q. You also worked overtime?

A. Yes.

✓ Q. You received the same hourly rate for overtime?

A. Yes.

Q. And after the N. R. A., you continued to work for Mr. Fainblatt?

A. Yes, I did.

Q. Did you continue on an hourly rate?

A. Yes.

Q. Did you receive the same hourly rate?

A. No.

Q. What was it, increased or decreased?

A. Decreased.

Q. Decreased to what?

A. To twenty-one cents an hour.

Q. How many hours a week were you working then?

MR. GIROFSKY:

What week?

MR. MOSCOVITZ:

After the N. R. A.

MR. GIROFSKY:

Does this mean every week following the N. R. A.?

BY MR. MOSCOVITZ:

Q. Did you work regularly every week following the N. R. A.?

A. No, we did not, at first we did, then we were working all hours.

Q. You mean what?

A. We would come in at noon time, work to the end of the day, or come in in the morning and work until noontime, or we would work overtime until six o'clock, and the next morning there would be no work, so we would come in at ten or eleven o'clock.

Q. Was that the manner in which your employment continued until the date of your discharge?

A. Practically.

Q. Working irregularly?

A. All the time irregularly from then to the time I was discharged.

Q. Can you tell me how many hours you would average a week after the N. R. A.?

A. Well, sometimes we would work pretty good.

Q. When you say "pretty good", you mean how many hours?

A. Well, thirty hours, sometimes a little more, but very seldom more than thirty-five hours.

Q. Yes.

A. And sometimes we would only get in twenty hours.

Q. Is that the lowest number?

A. I don't think we worked any less than that.

Q. You are not sure is that it?

A. I am not positive.

Q. But as far as you know, you would approximate between twenty and thirty-five hours over this period of time in an irregular manner?

A. Yes.

Q. But you are definite about the hourly rate; is that it?

A. Yes.

Q. Now, before the expiration of the N. R. A., when you were receiving the higher hourly rate, you had been working regularly?

A. Yes.

Q. Had you been notified by Mr. Fainblatt that your wages were going to be decreased when they were decreased?

A. No.

Q. And what happened?

A. Well, they were decreased twice, the first time I think the office girl told us—

MR. GIROFSKY:

I object to what this witness thinks.

BY MR. MOSCOVITZ:

Q. Who is the office girl?

A. Jean Sanders, the office girl told us about two days before pay day.

MR. GIROFSKY:

I object to any conversations with an office girl. It is hearsay.

TRIAL EXAMINER GATES:

It is in the regular course of business, the witness may answer. Objection overruled.

MR. GIROFSKY:

Exception.

A. The office girl usually did tell us about such matters. She told us that all the floor girls had been cut to twenty-one cents an hour. Then there was a second cut after that, and this cut we didn't have any knowledge of whatsoever until we got our pay, and this time we had been cut three cents on an hour and we received our pay and found that

we were short, so I went to the office girl. I asked her why. She said, "You have been cut three cents on an hour", and I asked her why, and she said she didn't know, and I asked her if she was supposed to have given us notice of it, and she said "No".

MR. GIROFSKY:

I object to this, Your Honor, and ask that it be stricken on the same grounds as before.

TRIAL EXAMINER GATES:

Objection overruled.

MR. GIROFSKY:

Exception.

A. So, we went up to Mr. Fainblatt and asked him why we had been cut three cents on the hour without being notified, and Mr. Fainblatt's answer was that there was no more N. R. A. and he could pay us whatever he chose, and that he could get girls to do our work for five dollars a week, and if we were not satisfied to work for what we were getting, why, we could go home.

Q. So that after the series of cuts and the irregular employment that came with it, you then decided to organize to protect yourselves: is that it?

A. Yes.

MR. GIROFSKY:

I object to counsel's question, and ask that it be stricken from the record, as not a question.

TRIAL EXAMINER GATES:

I will let it stay.

MR. GIROFSKY:

Exception.

BY MR. MOSCOVITZ:

Q. Miss Heitz, I show you Board's exhibit number four, marked for identification. Can you tell me what it is?

A. That is the card I signed to join the Union.

Q. An application card?

A. Yes.

Q. In whose handwriting is it?

A. It is all in my handwriting.

MR. MOSCOVITZ:

I offer it.

MR. GIROFSKY:

I wish to examine this witness first with respect to this card.

TRIAL EXAMINER GATES:

Very well.

Cross Examination

BY MR. GIROFSKY:

Q. This is your handwriting?

A. Yes, it is.

Q. You are married?

A. Yes.

MR. GIROFSKY:

I have no objection.

TRIAL EXAMINER GATES:

It is received.

(Document referred to received in evidence, marked Board's exhibit number four, Witness Heitz).

BY MR. GIROFSKY:

Q. You worked until August 21st, 1935?

A. Yes, I did.

Q. And you did not work thereafter?

A. No, I did not.

Q. So that the charge in the complaint that you worked until September 18th, 1935, is not correct; is that so?

A. It is not so.

MR. MOSCOVITZ:

The complaint says August 28th, 1935.

BY MR. GIROFSKY:

Q. Now, Mrs. Heitz, your duties at the plant were rather light, just trimming with a scissors, these few garments each day that you did report; isn't that so?

A. I did other things besides trimming garments.

Q. But you did perform that work, that did not require your presence on the plant's premises for any more than four or five hours a day; isn't that so?

A. No, that is not so. Trimming was done all day long.

Q. But on many occasions during your employment there, you reported to work at ten o'clock in the day?

A. When I did, why, all the floor girls did the same thing.

Q. We are just speaking about you now. You reported on many occasions at ten o'clock in the morning?

A. After the N. R. A. went out of existence, yes.

Q. And on some of those occasions you left before five o'clock; isn't that so?

A. Very seldom. When we came in at ten o'clock we usually left at five or later.

Q. But you did on many occasions; didn't you?

A. I wouldn't say that.

Q. Did you leave at any time before five?

A. If we came to work in the morning—

Q. Just yourself.

A. Well, if I came to work in the morning at eight o'clock, sometimes we would finish up the

work, or there would be no more work, we would be all sent home at four o'clock.

Q. So that you didn't work an entire day on many occasions; isn't that so?

A. Yes.

Q. And you were just paid on an hourly basis?

A. Yes.

Q. Now, when you received your first cut, you say you were notified?

A. Yes.

Q. By the office girl?

A. Yes.

Q. How much were you making just before the cut?

A. An hour?

Q. An hour.

A. Twenty-four or twenty-four and a half, I don't know exactly.

Q. You are not certain?

A. Either twenty-four or twenty-four and a half cents an hour.

Q. How much did you receive after you heard you were going to be cut?

A. Twenty-one cents.

Q. How long a period of time was it from the time you got your first cut to the time you say you received the second cut?

A. I am sorry, I can't tell you exactly, but it was about three weeks.

Q. About three weeks. And you continued working there after you received the first cut; isn't that right?

A. Yes.

Q. You had not seen Mr. Fainblatt about the cut, had you?

A. No.

Q. And you did not speak with him about it?

A. No.

Q. And you say you received a second cut?

A. Yes.

Q. How much?

A. Three cents.

Q. How much did you receive after you received the second cut?

A. Eighteen cents an hour.

Q. How many hours a day did you work?

A. About six hours a day.

Q. Some days you worked less?

A. Some days more, some days less.

Q. You always got paid for your work, did you?

A. Yes.

Q. There never were any errors, were there?

A. No.

Q. And getting down to the 21st of August, what time did you leave the plant?

A. Well, I worked overtime that night. I don't know exactly how long it was.

Q. How long did you work after you received the second cut, Mrs. Heitz?

A. I don't know how long it was after the second time.

Q. Would you say it was four weeks, Mrs. Heitz?

A. No, it was not as long as that.

Q. Two weeks?

A. It would be closer to two weeks than to four.

Q. It might have been three?

A. No.

Q. You continued to work under that second cut, didn't you?

A. Yes.

Q. And did you complain to Mr. Fainblatt or tell Mr. Fainblatt that you would not work at that rate?

A. Mr. Fainblatt had already told me that if I didn't want to work for that, I could quit.

Q. Did you quit?

A. No.

Q. Were you satisfied to work?

A. I was not satisfied, no.

Q. Why did you remain there?

MR. MOSCOVITZ:

Answer the question.

A. Well, five dollars a week is better than nothing.

BY MR. GIROFSKY:

Q. You were satisfied then; is that right?

A. No, I was not satisfied. I can do a thing and not be satisfied with it.

Q. Did you, at that time, were you seeking employment elsewhere?

A. No.

Q. After you had received the second cut?

A. No, I was not.

Q. Why weren't you seeking employment elsewhere?

A. Well, at that time we girls were talking about—

Q. Just yourself.

A. I was not talking with myself.

Q. Just talk about your own activities, Mrs. Heitz, please.

A. I can't tell you.

Q. I am trying to be fair with you now.

A. I can't tell you what I did when I was engaged in doing it with someone else.

Q. You didn't seek employment elsewhere?

A. No, I did not.

Q. Now, since August 21, 1935, you have been unemployed?

A. Yes.

Q. And are you receiving any wages from anyone?

A. I get five dollars a week from the Union.

Q. Are you satisfied with the receipt of five dollars a week at the present time from the union?

A. I am satisfied temporarily.

Q. Temporarily?

A. Yes.

Q. And just as you were satisfied with five dollars a week from Mr. Fainblatt; is that right?

A. No, I consider this an entirely different thing.

Q. A different thing?

A. When I was working for Mr. Fainblatt, that was to go on indefinitely.

Q. And is this Union work to go on definitely, or indefinitely?

MR. MOSCOVITZ:

Does Mr. Girofsky mean Union relief pay?

MR. GIROFSKY:

Union work or relief, whatever you characterize it.

MR. MOSCOVITZ:

I think it should be characterized properly by counsel. I have never heard of it called union work. It might have been union relief pay.

TRIAL EXAMINER GATES:

Answer the question.

A. I am not doing any Union work.

Q. You are not doing anything?

A. No.

Q. Have you sought employment anywhere since August 21st, 1935?

A. No.

Q. You have not?

A. No, I have not.

Q. You have not sought employment anywhere, have you?

A. No.

Q. (Omitted.)

A. Well, as I understand it, we are on strike to try to go back to work in the factory under better conditions and I waited to see the outcome of this before I start looking for employment anywhere else.

Q. How long are you willing to wait?

MR. MOSCOVITZ:

Mr. Examiner, I object to that question.

MR. GIROFSKY:

It goes to the motive.

TRIAL EXAMINER GATES:

I think she may answer.

BY MR. GIROFSKY:

Q. How long are you willing to wait?

A. As long as necessary.

Q. And you are satisfied then to receive five dollars a week indefinitely; is that so?

A. But I know it won't be indefinitely.

Q. Just answer yes or no.

A. (No answer).

Q. Who told you it would not be indefinite?

A. Mr. Posner.

Q. So that what you are doing is relying on the promises of Mr. Posner as to what he can do for you; isn't it?

A. No.

Q. He is the only one that told you it would not be indefinite; isn't it?

A. Mr. Posner didn't tell us anything about whether it would be indefinite or not.

Q. What did he tell you?

A. About what?

Q. About the strike conditions, about re-employment.

A. Well, if we wanted him to, Mr. Posner would place us in union factories.

Q. Has he placed you in union factories?

A. He has not placed me because I have not requested it, but he has placed other girls.

Q. He has placed other girls?

A. Yes.

Q. Then whether or not you are employed isn't a very serious matter with you at the present time?

A. Not right at the moment.

Q. When was the first meeting you attended?

A. August 21st.

Q. The very day you left the plant in Somerville? The Somerset Manufacturing Company?

A. The day I was discharged.

MR. MOSCOVITZ:

The day she was discharged, according to her testimony.

MR. GIROFSKY:

Mr. Moscovitz, this is my witness, for the moment.

TRIAL EXAMINER GATES:

The record is specific.

BY MR. GIROFSKY:

Q. What time of the day was the meeting?

A. The Union meeting? Five-thirty. It was supposed to be called at five-thirty.

Q. When were you notified to attend the meeting?

A. When was I notified? I was one of the girls that set the day of the meeting.

Q. When was your first union activity?

A. What do you mean by "union activity"?

Q. As I understand, you joined the Union the 21st; is that right?

A. Yes. That is the day—

Q. You are sure you joined on the 21st?

A. Yes.

Q. The day you joined is the day you signed this application card, marked exhibit number four, by the Board?

A. Yes.

Q. You want to stand on that day?

A. Yes.

Q. You say, you told me before, that you joined on the 21st?

A. Yes.

Q. You are sure it was on the 21st?

A. Yes.

MR. MOSCOVITZ:

If Mr. Girofsky doesn't extend courtesy to counsel when it is our exhibit—

BY MR. GIROFSKY:

Q. Will you read the date on this exhibit? What is that figure? I am pointing to the date on exhibit number four.

A. Yes.

Q. You joined on the 28th, after you were out of the employ or not working at the plant: isn't that so?

A. Yes, I was discharged on the 21st and it was after I left the factory and went up to the meeting

that I signed the card.

Q. Who was at the meeting?

A. About twenty-five of the workers.

Q. Where was the meeting?

A. Up in Raritan.

Q. Who was there besides the workers?

A. Mr. Posner.

Q. Who called that meeting?

A. Well, I wouldn't say it was exactly called.

Q. Who notified you to attend the meeting?

A. Ethel Rice.

Q. Was Mr. Posner there?

A. No.

Q. Who was present at that meeting?

A. The meeting of August 21st?

Q. Yes.

A. Mr. Posner and about twenty-five of the girls.

Q. You mean the meeting on the 28th?

A. No, I mean the 21st.

Q. The 21st?

A. Yes.

Q. You were not a member of the Union, were you?

A. I joined on the 21st.

Q. You joined on the 21st?

A. Yes.

Q. You told me a moment ago you joined the day you signed the card, which is dated the 28th—which is right?

A. Well, I made out this card on the 21st of August.

Q. How do you account for the date of it being the 28th on there and your signature under it?

A. I don't know how that happened.

Q. Now, who were the girls present at that meeting?

A. Is it necessary to name them all?

Q. I would like to know.

A. I can't name them all.

Q. I want to know who the girls were?

A. I can name some; but I can't name all of them.

Q. All right, name those at the meeting that you can.

A. Ethel Rice; Fay Katz; Theresa Yemma; four pressers, Josephine—

Q. Four pressers?

A. Yes.

Q. What are their names?

A. Mayme, Josephine, Gertrude and there is another one—I don't know what her name is—I don't know her very well.

Q. Do you know any others?

A. Then there was Elizabeth and Mary Gecik, and Mary Denko, Angelina Matteis; and there were several others, but I was not very well acquainted with the operators because I never worked with them. I worked downstairs.

Q. And that is all you can remember now?

A. That is all I can remember of the names.

Q. Did you stop and count them that day?

A. No, I did not.

Q. Was that at the meeting that Mr. Posner was authorized to represent you?

A. It was.

Q. When was the next meeting?

A. August 28th.

Q. August 28th?

A. Yes.

Q. How many were at that meeting?

A. About thirty-five.

Q. That is the first meeting you attended, isn't it?

A. No, between the first and second meetings, I know I was not working because I visited the homes of many of the girls and waited for them after the factory and some of the other girls did the same thing, and that is how the increase in the number occurred between the first and second meetings.

Q. Did you count them at that second meeting?

A. No, I did not count them.

Q. Do you remember the names of those present?

A. The same ones that I mentioned and several more. I don't remember their names.

Q. Was that the meeting at which the strike was called?

A. No.

Q. When was the next meeting?

A. The next meeting was September 5th.

Q. Where was it held?

A. The same place.

Q. Where is that?

A. In Raritan.

Q. And how many were present?

A. About thirty-five.

Q. Thirty-five. Did you count them?

A. No.

Q. And who was present?

A. The same girls I mentioned before.

Q. Was that the meeting at which the strike was called?

A. No.

Q. When was the next meeting?

A. Well, I don't know whether there was a meeting after that. I know there was one more meet-

ing, that was the night before the strike was called.

Q. You were there?

A. Yes.

Q. How many people were there?

A. The same number as at all the other ones.

Q. Did you count them?

A. No.

Q. Who were those people?

A. Well, outside of the ones I have already named, I don't think I can name any other ones.

Q. Then, all of the meetings that you attended, the number that you give is simply your guess or approximation?

A. Yes.

Q. Nothing more?

A. No.

Q. That is all. Have you paid any dues?

A. No.

TRIAL EXAMINER GATES:

Before the witness leaves, there are two or three questions I would like to ask and also one matter I would like to have in the record, either by testimony from the witness, or have you put it in just as a statement of counsel, and that is the pay periods of the company, whether they pay by the week, or how.

MR. GIROFSKY:

Do you want me to take this witness on the number of hours of work each week?

TRIAL EXAMINER GATES:

The company practice.

MR. WHARTON:

Monday through Friday is the period for which they are paid. They are paid on the following Thursday. The basis upon which the

workers are paid varies, some being paid by the week, others by the hour, and others by piece.

Examination

BY TRIAL EXAMINER GATES:

Q. Mrs. Heitz, on the question of time here, if you left the employment on August 21st and also joined the Union on August 21st, which occurred first?

A. I left the factory first, from the factory I went to the meeting and there joined the Union.

Q. You joined the Union, however, after your interview with the employer?

A. Yes.

Q. That is all.

BY MR. GIROFSKY:

Q. Since your questions, Mr. Examiner, I would like to continue on.

TRIAL EXAMINER GATES:

My questions, frankly, occurred to me before this discrepancy was brought out. I would just as soon counsel proceed in orderly manner.

Redirect Examination

BY MR. MOSCOVITZ:

Q. Now, it is clear, as I understand it now Mrs. Heitz, that your relationship with the company was severed on the 21st of August?

A. Yes.

Q. But after that, which would be that evening, you joined the Union?

A. Yes.

Q. Was it before the 21st of August that you had the conversation with Mr. Ruby?

A. Yes.

MR. GIROFSKY:

I object to this, Your Honor, this is all improper. Counsel has gone into this.

TRIAL EXAMINER GATES:

Objection sustained.

MR. MOSCOVITZ:

That is all.

Recross Examination

BY MR. GIROFSKY:

Q. This date on exhibit number four, introduced by the Board, is in your handwriting; isn't it Mrs. Heitz?

A. That date is not in my handwriting. My signature and all the rest is.

Q. Under that date?

A. Yes.

BY MR. MOSCOVITZ:

Q. This card that is in evidence, under your signature, is dated the 28th of August. Was that the date of the second union meeting?

A. Yes, it was.

Q. And you attended the first Union meeting on August 21st?

A. Yes.

Q. Are you sure whether or not you signed that card the first Union meeting or the second Union meeting?

MR. GIROFSKY:

I object to this question, Your Honor, the card speaks for itself, and has been gone thoroughly into with the witness. The date is on the card.

TRIAL EXAMINER GATES:

I would like to see if there is an explanation for this discrepancy.

MR. GIROFSKY:

There is no discrepancy, Your Honor. She said she signed it as it is. The Board introduced it. Unless the Board wants to impeach its own witness, I don't think this should be gone into further.

MR. MOSCOVITZ:

Not for a minute. This is an effort to determine whether she signed it at the second or the first meeting.

MR. GIROFSKY:

I submit this question is improper unless he wishes to neutralize the testimony of his own witness.

MR. MOSCOVITZ:

The question is whether or not a person was discharged because of her union activities, not when they pay their fees, or sign an application. I am perfectly willing to rest on the witness' story, but I would like very much for the purpose of clarification of the record, to ascertain whether or not there is something that happened on the 21st, insofar as signifying her intention to join, or whether she actually joined on the 28th.

MR. GIROFSKY:

I think that the card introduced by the Board sets up a state of facts. It is an admission by the Board. It is binding on the Board, and if counsel wishes to neutralize the testimony of this witness, I have no objection.

MR. MOSCOVITZ:

I do not wish to neutralize it.

TRIAL EXAMINER GATES:

All right.

BY MR. MOSCOVITZ:

Q. You attended the meeting August 21st?

A. Yes.

Q. Do you know whether or not you signed the card at the first meeting or the second meeting?

A. I can tell you what happened in the case of the card. At the first meeting there were only twenty-five girls there, and we were handed these cards and we filled them out. We put our names and addresses. We put our names and address but we didn't put on our age and sex and trade, and at the second meeting, the 28th, he handed the cards back to us and included the other girls that came to the last meeting and we filled out the rest of the cards. We filled out the age and the occupation and I put my name at the top. The first week, I only put it at the bottom.

BY MR. GIRONFSKY:

Q. Are they the only two meetings at which cards were signed?

A. That is when the majority of them were signed, but some were signed before that. Some of them were not even signed at the meeting.


Q. You didn't become a member until the 28th by actually signing your signature to a card? Is that right?

A. I signed my signature to the bottom of that card on the 21st.

Q. With the date on this card as the 28th?

A. There was not any date fixed to the card at that time.

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Q. No date affixed to the card?

A. No.

Q. Is that your explanation?

A. Yes.

Q. You are willing to rest on it?

A. Yes, I am.

TRIAL EXAMINER GATES:

We will recess until one-thirty.

(Thereupon at 12:25 a recess was taken until 1:30).

AFTER RECESS

FAY KATZ, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination

BY MR. MOSCOVITZ:

Q. Where do you live?

A. 23 Vanderveer Avenue, Somerville.

Q. Were you employed by the Somerville Manufacturing Company?

A. Not right now.

Q. Were you?

A. Yes.

Q. When did you go to work for the company?

A. The last part of December, 1934.

Q. And you worked until what date?

A. September 16, 1935.

Q. And are you one of the striking employees at the present time?

A. Yes.

Q. Have you been employed since that date?

A. Yes, I have.

Q. Since your discharge?

A. Yes.

Q. By whom?

A. Do you mean in Mr. Fainblatt's place?

Q. Have you been employed any place?

A. Yes, I have.

Q. Where?

A. Plainfield.

Q. And are you employed at the present time?

A. No.

Q. By whom were you employed in Plainfield?

A. Mr. Posner placed me.

Q. How long did you work there?

A. I worked there a week.

Q. How much did you work for that week?

MR. GIROFSKY:

I object to this. It does not have any bearing on the issue.

TRIAL EXAMINER GATES:

I think it does. Objection overruled.

BY MR. MOSCOVITZ:

Q. How much did you make for the week?

A. I went in there one afternoon and worked a full week and I made something over fifteen.

Q. For how many hours?

A. Well, we only worked from eight-thirty to four-thirty.

Q. Five days?

A. I worked four and a half.

Q. All right. That is the only period you have been employed since then?

A. Yes.

Q. What work were you doing for Mr. Fainblatt?

A. I made ski pants, skirts, and in the summer work, slacks, shorts, blouses and halters.

Q. Were you a trimmer, a finisher or what?

A. No.

Q. What were you called?

A. An operator.

Q. An operator. Were you employed on an hourly rate or a weekly salary?

A. Piece work.

Q. Paid by the dozen?

A. Yes.

Q. What would your piece rate be at the time of your discharge?

A. The last pay I got was two dollars and ninety-five cents.

Q. A dozen?

A. Oh, well, for ski pants, we were getting ninety-eight cents, and then we got sixty-three cents a dozen for them.

Q. Now, were you working on that particular article?

A. Yes.

Q. At the time of your discharge?

A. Yes.

Q. And what were you getting then?

A. Sixty-three cents a dozen.

Q. Sixty-three cents a dozen. Now, you say you had gotten a different rate prior to that?

A. We got ninety-eight cents during the N. R. A.

Q. And then after the N. R. A., were you cut?

A. To sixty-three cents.

Q. And that is what you were getting at the time you left?

A. Yes.

Q. Did you work according to the number of hours also?

A. I don't know what you mean by that.

Q. How many hours did you work during the week?

A. Well, at times I worked forty hours and when it was slack we worked three or four hours less.

MR. GIROFSKY:

I wish counsel would make the time definite in his questions.

MR. MOSCOVITZ:

I wish, if the witness will give me an approximation, an approximate average of the number of hours worked from the time of the expiration of the N. R. A. until her discharge by the company.

MR. GIROFSKY:

I submit that is improper, Your Honor. I feel counsel should lay a foundation for that question.

TRIAL EXAMINER GATES:

I thought a foundation had been laid.

MR. GIROFSKY:

Ask this witness how many hours she worked the first week after the N. R. A.

TRIAL EXAMINER GATES:

Objection sustained.

BY MR. MOSCOVITZ:

Q. Did you work regularly after the N. R. A., or irregularly?

A. Most of the time I did work regularly.

Q. And when you say regularly, what do you mean?

A. Forty hours a week.

Q. And that was after the N. R. A.?

A. Yes.

Q. Then you say most of the time you worked forty hours a week?

A. Yes.

Q. When didn't you work forty hours a week?

A. It was around three or four weeks before I was discharged.

Q. That was the first time there had been any difference in the number of hours you worked?

A. Yes.

Q. How many hours a week did you work then?

A. Twenty-eight hours, sixteen hours, twenty hours, thirty-five.

Q. And during the period when you were working forty hours a week, what was your weekly income?

A. Seven or eight dollars.

Q. And—

MR. GIROFSKY:

That is on the forty hour week?

MR. MOSCOVITZ:

Yes, the regular week.

BY MR. MOSCOVITZ:

Q. Is that right?

A. Yes.

Q. And when your hours were decreased three or four weeks before your discharge, what did you get?

A. I got three dollars and thirty-eight cents for twenty-eight hours.

MR. GIROFSKY:

For twenty hours or the amount of work she did? That is, for the amount of work she did in twenty-eight hours?

MR. MOSCOVITZ:

The question has been asked. If you would like to cross examine her, you may do so.

BY MR. MOSCOVITZ:

Q. What were you getting at the time of your discharge?

A. You mean in—

Q. Your weekly income at the time of your discharge? Did you receive a check when you were discharged?

A. Two days after.

Q. Yes, and what was the check?

A. Two dollars and ninety-five cents.

Q. For how many hours?

A. I don't remember because I worked that Monday a half day before I was discharged and that was put on the last week, the time I did work, so I couldn't tell you exactly.

Q. When did you join the Union?

A. I joined August 21st.

Q. 1935?

A. Yes.

Q. Had you been engaged in any Union activities prior to that date?

A. Yes, I had.

Q. Had you been interested in becoming associated with a union before that date?

MR. GIROFSKY:

I object to what her interest might be.

TRIAL EXAMINER GATES:

I think the question is clear. It is admitted.

MR. GIROFSKY:

Exception.

A. When the girls spoke to me about it, I told them I would be interested.

BY MR. MOSCOVITZ:

Q. Certain girls spoke to you about it?

A. Yes.

MR. GIROFSKY:

I object to this, your Honor. It is hearsay.

TRIAL EXAMINER GATES:

I don't think so. It is admitted.

BY MR. MOSCOVITZ:

Q. Certain girls did come to speak to you. Do you remember who?

A. Yes, I do.

MR. GIROFSKY:

Exception.

BY MR. MOSCOVITZ:

Q. Who?

A. Ethel Rice, a couple of other girls.

Q. This was before?

A. Yes.

Q. Do you remember how long before?

A. I think it was the day before.

Q. The day before. Did you know anything about union organization before that date?

MR. GIROFSKY:

I object to this, Your Honor.

TRIAL EXAMINER GATES:

On what grounds?

MR. GIROFSKY:

I withdraw the objection.

MR. MOSCOVITZ:

I withdraw the question.

BY MR. MOSCOVITZ:

Q. Had Mr. Fainblatt spoken with you about the Union?

A. No, he had not.

Q. Before August 21st?

A. No, he had not.

Q. Any one of your supervisory employees speak with you about the Union?

MR. GIROFSKY:

I object.

A. Miss Evans.

MR. GIROFSKY:

Just a minute—

MR. MOSCOVITZ:

I have not finished my question. You interrupted the answer, so I have to start right off again.

BY MR. MOSCOVITZ:

Q. Did any one of your supervisory employees speak with you about the union before August 21st, 1935?

A. Well, Miss Evans spoke to me on the day of August 21st.

Q. Anyone else?

A. No.

Q. Mr. Ruby?

A. No.

Q. Mr. Fainblatt?

A. No.

Q. And who is Mrs. Evans?

A. Well, she was the forelady.

Q. In your department?

A. Well, part of the time.

Q. Part of the time where was she?

A. Part of the time I worked for Mr. Ruby.

Q. And when you say she was a forelady, what did she do?

A. She told us what to do and how to do it.

MR. GIROFSKY:

I object to any testimony of conversations

with others not parties to these proceedings. It is hearsay.

TRIAL EXAMINER GATES:

Certainly I cannot object to agents of the respondents. The question is permitted.

MR. GIROFSKY:

This witness is not in a position to prove agency.

TRIAL EXAMINER GATES:

Please proceed.

MR. GIROFSKY:

I take an exception.

MR. MOSCOVITZ:

I am just putting in facts.

BY MR. MOSCOVITZ:

Q. Will you continue answering my questions?

A. What is the question?

Q. What were her duties in relationship to you?

A. She told us how to do things, she gave us the work and she marked our work for us.

Q. Was she your immediate boss?

A. Yes.

Q. Was there any other boss over her?

MR. GIROFSKY:

I object to this question, Your Honor.

BY MR. MOSCOVITZ:

Q. Don't you know?

TRIAL EXAMINER GATES:

Objection overruled.

MR. GIROFSKY:

Exception.

A. Well, we had a new lot of skirts in, new style, and Miss Lee was in there and she was telling her how to do things, and she came over to us and explained them.

Q. Is that Marjorie Fainblatt?

A. We know her as Miss Lee.

Q. Who is Miss Lee?

A. Mr. Fainblatt's daughter.

Q. Is she in court?

A. No, she is not.

Q. Would Mr. Fainblatt say whether Miss Lee is Marjorie Fainblatt?

MR. FAINBLATT:

She is.

MR. MOSCOVITZ:

Mr. Fainblatt indicates that the witness' reference to Miss Lee is a reference to his daughter, Marjorie Fainblatt; is that correct, Mr. Fainblatt?

MR. FAINBLATT:

Yes.

MR. GIROFSKY:

Does Mr. Moscovitz want me to call Mr. Fainblatt to the stand? Do you want me to put him on?

MR. MOSCOVITZ:

Will you stipulate a fact if it is a fact?

MR. GIROFSKY:

Do your job, if it is your job.

MR. MOSCOVITZ:

Will you stipulate that it is a fact?

MR. GIROFSKY:

If it is your job, you are failing at it.

MR. MOSCOVITZ:

Don't hide behind these fancy verbiages. I understand Mr. Fainblatt's statement is in the record. Is there any objection to Mr. Fainblatt's statement that Miss Lee is his daughter, Marjorie Fainblatt?

MR. GIROFSKY:

I have no objection, but I think you ought to proceed regularly with it instead of doing it half way.

BY MR. MOSCOVITZ:

Q. Miss Katz, did anyone besides Miss Lee supervise your work?

A. There was one man from New York came in. He showed us how to do samples on the new snow suits. I think his name was Mr. Drake, I don't know.

Q. Was he there all the time?

A. He was there for quite a while.

Q. But Miss Lee was the regular supervisor—

A. She was there for two days. She came in and showed Mrs. Evans a new style of skirt, how they were to be done.

Q. Had you ever spoken with Mr. Ruby about the Union?

MR. GIROFSKY:

I object to any conversations with Mr. Ruby on the same grounds as my other objections.

TRIAL EXAMINER GATES:

Overruled.

BY MR. MOSCOVITZ:

Q. Did Mr. Ruby ever speak with you?

MR. GIROFSKY:

I object to that question as hearsay.

TRIAL EXAMINER GATES:

Overruled.

A. I don't think he has.

BY MR. MOSCOVITZ:

Q. When was the last day that you worked for the Somerset Manufacturing Company?

A. September 18th.

Q. What happened to you on that day?

A. Well, I had to finish some work for Friday and I went in Monday morning and I finished it at eleven o'clock, and Mr. Ruby kept me there until twelve o'clock.

Q. Who was he?

A. He was the foreman that I was working for at that time, and I just finished ski pants and he had the whole shelf full of skirts and I had worked on skirts before and he said, "I haven't any work for you, come in tomorrow morning and I will start you on skirts", and in the meanwhile he had given other girls skirts to work on that had not worked on skirts and I told him, "All right", and I went in the next day and Mr. Fainblatt wouldn't let me in the plant. He kept me in the office outside and he said, "I have no work for you". I said, "You gave the other girls work", and he said, "I don't owe you anything. If you want work you can go to the Union". So I went out.

Q. Now, before you were discharged, had you ever attended a meeting conducted by Mr. Fainblatt at which the question of union organization was raised?

A. Yes, I have.

Q. Do you recall when that was?

A. Yes, that was the day of the first meeting, August 21st.

Q. And where was the particular meeting held?

A. On the second floor where the operators are.

Q. In the company's plant?

A. Yes.

Q. Who were there?

A. The girls, they called all the girls together.

shut the power off at four-thirty and, had Mayor Hess and Mr. Hawley there.

Q. And what happened at that time?

A. Well, he introduced Mayor Hess first as a friend of his, and a friend of ours.

Q. When you say "he", do you mean Mr. Fainblatt?

A. Yes. Then Mr. Hess spoke and said that he heard we were trying to organize the shop and he said it was very foolish trying to organize the shop because our bread and butter is right there and there is too many people on relief as it is, and he don't want us on relief and he said Mr. Fainblatt would have nothing to do with the Union.

Q. Did he say whether or not he would stick behind Mr. Fainblatt?

A. He said yes, that he would stand behind Mr. Fainblatt.

Q. Now, was Mr. Adams there?

A. No, Mr. Adams was there on August 28th.

Q. Well, who else was there?

A. Mr. Hawley.

Q. Who is Mr. Hawley?

A. He is the insurance agent of the plant.

Q. Do you know where he lives?

A. No, I don't.

Q. Does he have an office in Somerville?

A. Yes.

Q. Where?

A. On Division Street.

Q. What building, the Central Building?

A. Yes, I think it is.

Q. And do you know which Mr. Hawley it was?

A. Wallie Hawley, I think, the young one.

Q. And did Mr. Fainblatt introduce him also?

A. Yes, he introduced him.

Q. How did he introduce him?

A. As a friend of his and a friend of ours also.

Q. Did he speak?

A. Yes.

Q. What did Mr. Hawley have to say?

A. He was telling us of an experience that he had when he was building ships and he belonged to a union and he was making a large sum of money and then he said that they caught one fellow smoking and they all had to go out on strike to get that fellow back and they did go back and they had to put so much money up that they couldn't do it, so they were all out of a job, and he told us to take his advice and stay out of the union; and he told us his girl was getting eight dollars a week using her brains, and she was getting half as much as we were.

Q. Anything further?

A. No. He said we should stick to our boss and go to him with our troubles.

Q. Anything further?

A. No.

Q. Any reference to whether or not Mr. Hawley had an interest in the place?

A. He rented the plant to Mr. Fainblatt and I suppose he had it insured.

Q. Did he say that?

A. No, but I happen to know that.

Q. You made a reference a while ago to Mr. Adams. Do you mean Mr. Robert Adams?

A. The sheriff, Sheriff Adams.

Q. The sheriff of this county?

A. Yes.

Q. Did he also address you girls?

A. On August 28th, he did.

Q. Where at?

A. Downstairs, near the office.

Q. Of the plant?

A. Yes.

Q. What time of the day was it?

A. That is when we were to go get our pays. Mr. Fainblatt wouldn't let anybody get their pays until they were all down stairs together.

Q. And what else?

A. He closed the doors and wouldn't let us leave until Mr. Adams spoke.

Q. Did Mr. Fainblatt introduce Mr. Adams?

A. Yes.

Q. How?

A. Sheriff of Somerville. He said he just got through looking at the payroll and we had no kick coming to us, and that we should all stick to our boss and go to him with our troubles, and he would fix it up for us.

Q. That is the week you got—

A. Yes, three dollars and twenty-eight cents for thirty eight hours.

Q. Did he make any reference at that time to the Union?

A. He said we should not join the union.

Q. I show you Board's exhibit number five, marked for identification, Miss Katz, is this your application blank?

A. Yes.

Q. Will you tell me whether or not that is your signature?

A. Yes, it is.

Q. You signed your own name to it?

A. Yes.

Q. Is the rest of the card in your handwriting?

- A. No, that is Mr. Posner's.
Q. Did you give him the information?
A. Yes, I did.
Q. He wrote it down?
A. Yes.
Q. You signed it?
A. Yes.
Q. You signed it on the date stated here, August 21st, 1935?
A. Yes.
Q. That is all.

Cross Examination

BY MR. GIROFSKY:

- Q. Where do you live, Miss Katz?
A. 23 Vanderveer Avenue.
Q. How long have you lived there?

MR. MOSCOVITZ:

I offer the card, is it introduced or is there to be an objection to it?

MR. GIROFSKY:

I should like to examine her on the card first.

BY MR. GIROFSKY:

- Q. Did you sign this card?
A. Yes, I did.
Q. And when did you sign it?
A. August 21st.
Q. What year?
A. 1935.
Q. Where were you when you signed it?
A. Up at the hall in Raritan.
Q. What hall?
A. I don't remember the name of it.
Q. What street?
A. I don't know.

Q. You don't know. Who was at the halt in Raritan?

A. The girls; Mr. Posner.

Q. How many girls?

A. There were around twenty-five girls.

Q. Did you count them?

A. Well, I looked at them.

Q. Did you count them?

A. Not exactly.

Q. Yes, or no?

A. Well, I did look over them.

TRIAL EXAMINER GATES:

Answer the question.

A. No.

BY MR. GIROFSKY:

Q. Why didn't you?

A. Well—

Q. Why didn't you? Answer me.

A. No, I didn't.

Q. Why didn't you answer me in the first place?

Now, we can get along very well if you will answer my questions and refrain from fencing.

MR. MOSCOVITZ:

Mr. Examiner, the witness is obviously not fencing with Mr. Girofsky.

MR. GIROFSKY:

That is obviously the contrary.

BY MR. GIROFSKY:

Q. You didn't count the girls?

A. No.

Q. You don't know how many were there?

A. I know about how many were there.

Q. Who were the girls there?

A. Some girls from the plant.

Q. Name them?

A. Well, I remember Ethel Ree was there, Mary Morano, Anna Santora, Vangie Matteis.

Q. Is that all you can name?

A. That is all, all that I remember now.

Q. That was the meeting on the 21st?

A. Yes.

Q. Did you write this entire card?

A. No.

Q. Who wrote the other phases of it?

A. Mr. Posner.

Q. I have no objections.

MR. MOSCOVITZ:

I offer it.

TRIAL EXAMINER GATES:

Received.

(Document referred to received in evidence, marked Board's exhibit number five, Witness Katz).

BY MR. GIROFSKY:

Q. You were arrested by the Somerville police, weren't you?

MR. MOSCOVITZ:

I object to that question. How is that material to this issue?

MR. GIROFSKY:

I believe this is material to the issue, Your Honor. I want to show this girl's activities and her attitude.

TRIAL EXAMINER GATES:

I don't know whether it is material but I think it may go in at the moment, at least.

MR. MOSCOVITZ:

I may also state in the record—well, I will reserve the statement until I see what Mr. Girofsky is going to say.

BY MR. GIROFSKY:

Q. You were arrested by the Somerville police during the picketing activities on the plant's premises; were you not?

A. I was not arrested.

Q. You were taken to police headquarters, were you not?

A. Yes.

Q. You were discharged with a warning, were you not?

A. Yes.

Q. You were. And that was for disorderly conduct, was it not?

A. No.

MR. MOSCOVITZ:

Mr. Examiner, now just a moment, may I make a statement?

TRIAL EXAMINER GATES:

Certainly.

MR. MOSCOVITZ:

It is certainly obvious in a community such as Somerville, where the mayor of the community, the sheriff of the county, the gentleman who rented the property to Mr. Fainblatt, conspire with him to rid his plant of a Union organization, the gentleman who is associated with the prosecution comes in and identifies himself with the respondent here, that the entire testimony in this direction and in this regard should be stricken from the record.

MR. GIROFSKY:

And in answer to Mr. Moscovitz, I am sorry that he takes that attitude towards his home town, which he has left for bigger fields. I might say that the prosecutor's office was not repre-

sented at any police court hearing, that this is entirely a municipal affair, and not a county affair, that this girl was arrested, she was released, that she has been up to the police court, and if Your Honor please, I feel I ought to have an opportunity to answer these remarks which are entirely out of order and improper and unfair to the county officials.

MR. MOSCOVITZ:

We will let the record speak for itself.

TRIAL EXAMINER GATES:

The line of questioning may continue, but the last question was entirely improper.

MR. GIROFSKY:

Before going on with this witness, I wish to refer to the rules of this Board promulgated by this Board, and I want to know where I stand with respect to rules of evidence, whether the rules as promulgated by the Board itself are correct or whether Mr. Moscovitz is correct in his interpretation of the rules, or the rules in use. Is it a fact that strict rules of evidence do not pertain to this hearing?

MR. MOSCOVITZ:

Have you read the Statute? I am not in the habit of educating counsel for the other side. If Mr. Girofsky is so familiar with the rules of evidence, he would not have asked the question in the manner in which he did to this witness.

MR. GIROFSKY:

I want you to admit it.

Will Your Honor grant me a ruling on that? Do the rules of evidence apply in this proceeding?

MR. MOSCOVITZ:

What rules?

TRIAL EXAMINER GATES:

What is your contention?

MR. GIROFSKY:

I just want to find out whether or not counsel is going to confine me to a technical ruling here on matters of this arrest.

MR. MOSCOVITZ:

Mr. Girofsky is blowing hot and cold. Mr. Girofsky has interposed so many objections during this entire proceeding that it has made me dizzy. Now, he comes in—if Mr. Girofsky is not familiar with the Statute in this case, Mr. Examiner, I will be very pleased to tell him that the statute provides that legal rules of evidence shall not be controlling in these proceedings.

MR. GIROFSKY:

Exactly. Evidently, I was right.

MR. MOSCOVITZ:

You were not sure.

BY MR. GIROFSKY:

Q. You were taken to police headquarters by a policeman, were you not?

A. Yes.

Q. And you were taken into the custody of the police on the premises of the manufacturing plant—is that right?

A. What was that?

Q. Where were you taken in custody by the police?

A. Repeat it.

Q. I repeated it.

(Question read)

A. In Fainblatt's place.

Q. In the alleyway?

A. Yes.

Q. You were raising a disturbance at the time, were you not?

A. No.

MR. MOSCOVITZ:

I object, Mr. Examiner. It seems to me the witness should not be placed in a position of possibly incriminating herself in this proceeding.

MR. GIROFSKY:

That objection must be raised by the witness, if we are adhering to strict rules of evidence, Mr. Moscovitz. She has been advised—too much.

MR. MOSCOVITZ:

Furthermore, I cannot see for the moment where this is leading us to and how this is material to the issue as to whether or not this girl was discharged for Union activities.

TRIAL EXAMINER GATES:

Objection sustained.

MR. GIROFSKY:

It is just as important to show the credibility of this witness. She has denied that she was arrested. There are records to indicate that she was taken in custody and sentenced. If I can affect her credibility in that respect, I am going to do it. She has no appreciation for the oath of this court.

MR. MOSCOVITZ:

I again must object on the record to Mr. Girofsky's improper references to the testimony of this witness. It is a means of badgering and intimidating this witness, which is disgraceful in any proceeding, and I must very strenuously

state my objection in the record for that purpose.

TRIAL EXAMINER GATES:

Objection overruled.

MR. GIROFSKY:

Is Mr. Moscovitz' objection overruled?

TRIAL EXAMINER GATES:

Answer the last question. I previously ruled the objection was sustained. I think the record is clear on that.

BY MR. GIROFSKY:

Q. You were permitted to go away with a warning, were you not?

A. Yes.

Q. What was that warning?

A. Not to stop any of the girls, to speak to her, or anything.

Q. And not to impede any girl or hamper her from going to and from work?

A. I did not.

Q. Weren't you warned to refrain from that?

A. From talking to any girl.

Q. Yes or no?

A. From speaking to any girl.

Q. And it was your talking and speaking to any of the girls down there that lead to your going to police headquarters; isn't that so?

A. Yes.

Q. Now, when was the second meeting of the Union that you attended?

A. The 28th.

Q. Where?

A. Raritan.

Q. Where in Raritan?

A. At this hall.

Q. You still don't know the street?

A. No.

Q. Who was there?

A. The girls, Mr. Posner.

Q. How many girls?

A. There was between thirty-three and thirty-five.

Q. Did you count them?

A. I knew how many there was.

Q. Yes or no, did you count them?

A. No.

Q. Answer the questions please. And who were the girls there?

A. I don't remember.

Q. You can't name them?

A. No.

Q. That is your best answer?

A. Yes.

Q. Where was the next meeting held?

A. In Raritan.

Q. Going back a moment, the first meeting that was held in Raritan, is that the meeting that Mr. Posner was elected to represent the girls?

A. Yes.

Q. The second meeting that was held there, that was the meeting that was held in order to vote upon calling a strike, wasn't it?

A. No.

Q. Was everybody permitted to enter that hall that night?

A. What night is that?

Q. The second meeting.

A. Anybody that was interested, yes.

Q. Anybody permitted to enter the first meeting?

A. Yes.

Q. And when you say "anybody", "anybody who was interested" what do you mean by that?

A. Any of the girls in the plant that were interested in organizing were allowed in there.

Q. Any one else permitted to enter that outside of the girls in the plant interested in Union activities, and Mr. Posner, was anyone else permitted to enter?

A. I don't know what you mean by that.

Q. In other words this meeting was closed to everybody except those potential members, the girls that were working in the plant and Mr. Posner—no one else was permitted to enter?

A. Yes, there were.

Q. How do you know that?

A. I happen to know that, the mayor and Mr. Hawley were invited to one meeting.

Q. At Raritan?

A. Well, it was at Raritan.

Q. I am talking about the first meeting in Raritan.

A. Anybody could go there, anyone was allowed.

Q. Could anybody enter that meeting that night?

A. Yes.

Q. Who called that meeting?

A. The girls.

Q. What girls? Name them.

A. Ethel Rice told me about it, that they are going to call a meeting that night.

Q. Who else?

A. Mary Morano and Anna Santora.

Q. Were they the only three girls?

A. They came to me.

Q. Did you notify any girls of the meeting?

A. You mean the first day? I asked a couple.

Q. Who?

A. I don't remember who they were.

Q. You don't know?

A. I don't remember now.

Q. You just asked a couple? Were the girls you asked actually working at the time?

A. Yes.

Q. Are they working now?

A. I don't know.

Q. You don't know?

A. Some of them are on strike.

Q. The two girls, the couple you asked, are they working?

A. No, they are out on strike.

Q. What did you mean before when you said you don't know?

A. I asked more than a couple.

Q. Now you asked more than a couple. How many did you ask?

A. I can't tell the exact amount.

MR. MOSCOVITZ:

What difference does it make if she asked fifty or five or none. I object to the question on the ground of its being immaterial and absolutely irrelevant to the issue, and it seems to me that Mr. Girofsky is engaged in a beautiful fishing expedition which gets you no place.

MR. GIROFSKY:

I am catching a lot of suckers.

MR. MOSCOVITZ:

That remains to be seen. I wouldn't like to characterize what you are catching, Mr. Girofsky.

TRIAL EXAMINER GATES:

Objection sustained.

BY MR. GIROFSKY:

Q. How many girls attended the second meeting?

A. Thirty or thirty-five.

Q. You told me before you didn't count them, did you?

A. I imagine there was that amount.

Q. Is it just your imagination?

A. Yes.

Q. You didn't count them, did you?

A. No.

Q. Who were the girls?

A. I can't remember all of them.

Q. Name them?

A. Ethel Rice, Mary Morano, Angie Matties and Anna Santora, Elizabeth Shoaka.

Q. Is that all?

A. Yes.

Q. The third meeting, where was that held?

A. The same place.

Q. Who was there?

A. The girls, Mr. Posner.

Q. Name the girls.

A. I just named the ones that were at the second meeting. They were there too.

Q. Who else?

A. A lot of them.

Q. Name them.

A. I can't.

Q. Why can't you?

A. I can't.

Q. You don't know?

A. I do know.

Q. You have been out with them picketing in

these small quarters, cooped up here, and you can't name them?

MR. MOSCOVITZ:

I object.

TRIAL EXAMINER GATES:

Objection overruled.

BY MR. GIROFSKY:

Q. You can't name them?

A. No.

Q. You can't name them—

MR. MOSCOVITZ:

She can't name them, for the fourth time.

BY MR. GIROFSKY:

Q. Was that the meeting where the strike was called?

A. No.

Q. When was the next meeting? We have had three, when was the next meeting?

A. The next meeting—I don't remember if that was the last meeting or the meeting before.

Q. You had three meetings. When was the next one held?

A. I don't remember if we had four or five.

Q. I am asking for the fourth meeting, when was it held?

A. The night of the strike.

Q. What night was that?

A. That was on Tuesday night, September 17th, the night before the strike.

Q. Where was it held?

A. Recreation Center.

Q. Who was there?

A. The girls and Mr. Posner.

Q. Who were the girls?

A. Well, the girls that vow—that signed up for the Union.

Q. Who were the girls, name them.

A. There was quite a few of them.

Q. Name them?

MR. MOSCOVITZ:

Mr. Examiner, I must object again to this. I don't like to interpose these objections, but it is absolutely immaterial. The records will speak for themselves, as to whether or not the girls belong to the Union. The physical manifestation of joining the Union exists by the girls going out on strike. Where are we going to draw the line on this line of questioning.

MR. GIROFSKY:

You opened the door to it.

TRIAL EXAMINER GATES:

We have had a wide latitude here for both counsel. I expect that a certain amount of discretion will be used in pursuing it. I don't like all these objections. Please proceed.

BY MR. GIROFSKY:

Q. Who were the girls there?

A. Well, there was Ethel Rice, Angie Matteis, Margaret Hoffman, Mary Spatt.

Q. Name any others.

A. Anna Santora, Mary Morana.

Q. Is that all?

A. That is all I can remember now.

Q. How many were there?

A. I didn't count them.

Q. You didn't count them. You don't know, do you?

A. There was around forty there..

Q. Yes or no. Do you know how many were there?

A. No.

Q. Now that was the meeting at which the strike was called, isn't that so?

A. Yes.

Q. Was Posner there?

A. Yes.

Q. Ross there?

A. I don't remember if he was there or not.

Q. You don't know?

A. I don't remember.

Q. You don't know, do you?

A. I don't remember if he was there.

Q. When was the next meeting held?

A. I don't know what you mean by the next meeting. Was there another meeting?

Q. What kind of a meeting?

A. Of the Union—what kind of a meeting do you think I am referring to.

MR. MOSCOVITZ:

Before or after the strike? The witness should be given some idea of what Mr. Girofsky is leading to.

A. You said the next meeting.

BY MR. GIROFSKY:

Q. Don't argue with me. Answer the question.

TRIAL EXAMINER GATES:

If the question is not clear, the reporter can read it back to you.

A. I don't know which meeting he means. After or before—

BY MR. GIROFSKY:

Q. You had a meeting the night before the strike, when was the next meeting?

A. Well, after we walked out on strike, we all met.

Q. When?

A. After we all walked out on strike.

Q. When?

A. September 18th.

Q. Why didn't you answer the question in the first place?

TRIAL EXAMINER GATES:

You are confusing the witness and shouting at her, and I prefer that you conduct your examination in a more normal way.

BY MR. GIROFSKY:

Q. Who was present at that meeting?

A. The girls that walked out on strike, and the ones that were discharged and Mr. Posner.

Q. Any girls at that meeting who were— withdraw the question. Now, the last week you worked, ended when, on what day?

A. Well, ended on a Monday afternoon, noon time.

Q. During the last week you worked, how many hours did you work?

A. I don't know how many hours I worked. I didn't work steady.

Q. You didn't work a full week, that is eight hours a day, did you?

A. No.

Q. The last week. And how many dozen garments did you produce the last day that you were working?

A. I don't remember.

Q. How many garments did you produce in the last week that you were working?

A. I don't know.

Q. How much did you receive the last week as compensation?

A. The day we went out on strike, that was my last pay, and I got two dollars and ninety five cents.

Q. What did that two dollars and ninety-five cents represent?

A. The week before and Monday.

Q. You mean, the number of garments for which you were paid—how many a dozen.

A. Sixty-three cents a dozen.

Q. Sixty-three cents. About four dozen garments in one week, you produced; isn't that so?

A. I produced more than that.

Q. Yes or no, how many garments did you produce in the last week?

A. I don't remember.

Q. You were paid the proper amount, weren't you?

A. I don't know.

MR. MOSCOVITZ:

Witness has not stated she was not paid the proper amount.

BY MR. GIROFSKY:

Q. Did you ever go back to Mr. Fainblatt for more money after you received your pay?

A. He wouldn't have done it if we had.

Q. You didn't ask him was any more money due you?

A. I don't know.

Q. Was there—yes or no?

A. I don't know.

Q. Is that your best answer?

A. Yes.

Q. If there had been more money due you, you would have gone back for it, wouldn't you?

A. I don't think I would have.

MR. MOSCOVITZ:

How does that matter?

MR. GIROFSKY:

You have lead the public to believe that she received two dollars for a week's work.

MR. MOSCOVITZ:

I don't try this case for the public as you do, Mr. Girofsky. I try these cases for justice. We have made no allegation that this particular witness is entitled to any more money than she says she has gotten. I'll leave it for you to decide whether she received outrageously high amounts for her work.

MR. GIROFSKY:

Counsel has, on his direct examination gone into the matter of wages per week. The charge is that these girls complained of being under paid, overworked, bad conditions of work.

TRIAL EXAMINER GATES:

I don't know anything about that.

MR. MOSCOVITZ:

That is not the charge in the complaint.

MR. GIROFSKY:

It is not the charge in the complaint?

MR. MOSCOVITZ:

The charge in the complaint is that this company failed or refused to bargain collectively with representatives of these girls.

MR. GIROFSKY:

And that they had selected a representative because of poor working conditions and low wages.

MR. MOSCOVITZ:

That follows.

TRIAL EXAMINER GATES:

I don't see that any of the testimony on direct or cross is pertinent. I am willing to allow Mr. Girofsky a reasonable amount of latitude, but I hope that neither counsel will abuse the latitude that is given to them.

MR. GIROFSKY:

I will attempt to confine my examination, if Your Honor, please, to the matters brought out by Mr. Moscovitz on direct. I am making every endeavor to do that.

TRIAL EXAMINER GATES:

Please continue. If there is an objection on the rec'd, it is overruled.

MR. MOSCOVITZ:

But I think I am entitled to make one statement for the record because I fear that Mr. Girofsky is continuing under a misapprehension of our purpose. Now, it is clear that the only reason I direct any questions to the witness regarding hours and pay, and it is a relevant inquiry, is because it might become necessary for the Board upon its consideration of the record, if it finds that the witness was improperly discharged, to determine amounts of back pay that witnesses are entitled to, so I submit that it is certainly relevant.

MR. GIROFSKY:

For that purpose, Your Honor, I wish to show that the conditions under which she worked, Your Honor, has already permitted me to proceed, I won't endeavor to answer him.

BY MR. GIROFSKY:

Q. How many garments did you produce in the last week?

A. I don't remember.

Q. You don't know, do you?

A. I don't remember.

Q. Now, at the time you were working there, you received the same price per dozen garments as the other girls received, didn't you?

A. I thought so.

Q. And you never complained to Mr. Fainblatt prior to September 16th about the amount of wages, did you?

A. It wouldn't do any good.

Q. Did you, yes or no? Please, we will get along very well—

A. No, I didn't.

Q. You didn't, did you?

A. No, I didn't.

Q. And you never complained to Mr. Ruby about the wages, did you?

A. No, I didn't.

Q. And you worked there for how long, prior to September 16th?

A. Around nine months.

Q. You were steadily employed?

A. Yes.

Q. Yes, that is, Mr. Fainblatt endeavored to keep you occupied at something as much as he could in order to give you some return each week, isn't that so?

A. Repeat that question.

(Question read to the witness).

MR. MOSCOVITZ:

How can this witness testify what Mr. Fainblatt's endeavor was?

TRIAL EXAMINER GATES:

She may answer.

A. He had nothing to do with that.

Q. Did Mr. Ruby give you some work during the slow seasons? I withdraw the question. You worked steadily, didn't you?

A. Four or five months.

Q. Were you laid off at any time?

A. For an afternoon.

Q. Because of slow seasons?

A. Well, it was a little slow.

Q. There was no work for you at the time, was there?

A. Yes, there was.

Q. Now, during the nine months that you were in the employ of the Somerville and Somerset Companies, what was the greatest number of dozens of garments you produced, and what type of garments were they, in one week's time?

A. I couldn't tell you that because we were not on one style all day long.

Q. You received a certain amount, the same amount as the other girls received, didn't you? Isn't that right?

A. Yes.

Q. For a number of dozens, or each dozen of garments, and you were paid by Mr. Fainblatt each week for every dozen of garments that you turned out weren't you?

A. Yes.

Q. And he doesn't owe you any money today, does he, on the basis of the payment that you agreed to work there for; is that right?

A. That's right.

Q. If you had turned out fifteen dollars worth of work one week, you would have received fifteen dollars, is that right?

A. No, and during the N. R. A., no, we got thirteen dollars.

Q. You never got above thirteen dollars in the N. R. A.?

A. No.

Q. If you turned out more than thirteen dollars worth of work a week?

A. I never got thirteen dollars during the N. R. A.

Q. What were you doing during the N. R. A.? You were never paid thirteen dollars?

A. No.

Q. What kind of work were you doing?

A. Operated the same as when I was discharged.

Q. How many dozen garments did you produce the last week of the N. R. A. code?

A. I can't remember that far back.

Q. Did you ever produce enough garments to bring about a total payment of thirteen dollars?

A. Yes.

Q. You got it, didn't you?

A. I never got thirteen dollars.

Q. You received payment for every bit of work you performed? Answer yes or no.

A. I never got thirteen dollars.

Q. Does Mr. Fainblatt owe you any money today for work you did?

A. How do I know.

TRIAL EXAMINER GATES:

I think you had better ask her if she has any explanation for it. After all, you are building up a record. This is not a jury trial. I am after the facts in the matter, not debate.

BY MR. GIROFSKY:

Q. Did you pay any dues to the union?

A. No, I did not.

Q. Have you ever paid any dues?

A. No.

Q. Are you receiving any pay?

A. Yes.

Q. Are you working at the present time?

A. What do you mean "working at the present time"?

Q. Are you working at the present time?

A. No.

Q. How much are you getting?

A. Five dollars.

Q. What are you doing for the five dollars?

A. Picketing at times.

Q. Have you tried to get another job?

A. I didn't try but I was placed.

Q. Were you placed?

A. Yes.

Q. How long did you work at the other job?

MR. MOSCOVITZ:

That testimony has all been gone into.

MR. GIROFSKY:

By Mr. Moscovitz only.

BY MR. GIROFSKY:

Q. How long did you work at the other job?

A. Four and a half days.

Q. Where was it?

A. Plainfield.

Q. Is that the best Mr. Posner or the Union could do for you from September 18th to the present date?

A. We started this fight and we will fight it out.

MR. MOSCOVITZ:

If a person is going out on strike, they are entitled to go out on strike and exercise their economic strength to better working conditions,

and he can pass no aspersions because a Union makes relief payments to members.

MR. GIROFSKY:

If I recall correctly, Mr. Moscovitz opened the door to this line of questioning when he concerned himself with the witness working in Plainfield.

TRIAL EXAMINER GATES:

Continue the line of questioning, but you don't need to put in a double-barrel question that way.

BY MR. GIROFSKY:

Q. Have you worked anywhere else since your job of four days in Plainfield?

A. No.

Q. Who placed you in that job?

A. Mr. Posner.

Q. Has he sent you to any other place?

A. No.

Q. What did you do in those four and a half days?

A. I worked on skirts.

Q. Where?

A. In Plainfield.

Q. What shop?

A. Watchung Avenue, 400 Watchung Avenue.

Q. What is the name of the plant?

A. I don't know.

Q. Don't you know?

A. It is a skirt place.

Q. Who was your boss?

MR. MOSCOVITZ:

I object to the question. I don't see that it is relevant by whom she was employed so long as she worked during that period.

MR. GIROFSKY:

It is quite relevant. A person ought to know who they worked for for four days. They ought to know the name of the plant.

TRIAL EXAMINER GATES:

It is revelant. Objection overruled.

BY MR. GIROFSKY:

Q. Who was your superior?

A. We called him Mr. Alphonso.

Q. What is his name?

A. That is what we called him.

Q. Who was your employer?

A. Mr. Alphonso.

Q. Where does he live?

A. I don't know. He is an Italian man.

Q. Did you receive pay from Mr. Fainblatt by check?

A. No.

Q. You were in error when you told Mr. Moscovitz that you received a check the last day you worked?

A. I didn't tell Mr. Moscovitz I received a check.

MR. MOSCOVITZ:

I don't recall any such testimony.

MR. GIROFSKY:

You asked her when she received her check.

BY MR. GIROFSKY:

Q. You were paid in cash, weren't you?

A. Yes.

Q. Always?

A. Yes.

Q. How many girls worked at the plant in Plainfield?

A. I didn't stand up and count them.

Q. You didn't count them?. Approximately how many?

A. I don't know.

MR. MOSCOVITZ:

I object to this line of questioning. I think he ought to stop it. It is beyond any proper scope of examination.

TRIAL EXAMINER GATES:

Objection sustained.

Examination

BY TRIAL EXAMINER GATES:

Q. You were speaking of this employment of four and a half days at Plainfield, Miss Katz, you didn't state very clearly as to the amount of money you received for that?

A. I got fifteen dollars and some change.

Q. You don't know how much?

A. I don't remember how much.

Q. It was not sixteen dollars?

A. No. That was a new line of work. I had never worked on it before.

Q. As to your testimony about the two different meetings held in the plant that Mr. Fainblatt introduced the speakers, did he remain in the room during the meetings?

A. Yes, he did.

Q. As far as you noticed at least?

A. I was there and he was there.

Redirect Examination

BY MR. MOSCOVITZ:

Q. Miss Katz, in answer to Mr. Girofsky's ques-

tion, you stated that during the N. R. A. you were supposed to get thirteen dollars a week?

A. Yes.

Q. Well, is that—

MR. GIROFSKY:

I object to this. The code itself is the best evidence. I don't see where it has any materiality and it is not proper redirect.

MR. MOSCOVITZ:

Why did you go into this, then?

TRIAL EXAMINER GATES:

I don't think it is necessary to go into it any further.

BY MR. MOSCOVITZ:

Q. Just one further question. Mr. Girofsky stated that you were arrested. Also, the record will show that you were warned by certain officials as to how you should conduct yourself?

A. By one.

Q. Were you ever shown a warrant for your arrest?

A. No, sir.

MR. GIROFSKY:

I object to this. This has already been gone into.

MR. MOSCOVITZ:

I am certainly entitled to clear this up. It may prove prejudicial.

TRIAL EXAMINER GATES:

The record is clear on that point.

BY MR. MOSCOVITZ:

Q. Were you taken to an official?

A. I was taken to headquarters in front of assistant prosecutor.

Q. Before whom?

A. Right there. (Indicating.)

Q. Mr. Wharton, the gentleman who is acting as one of the counsel in this case?

A. Yes.

Q. Was he the gentleman that spoke with you?

A. Yes.

Q. Then you left?

A. Yes.

Q. That is all.

(Witness excused.)

TRIAL EXAMINER GATES:

We will have a three minute recess.

AFTER RECESS

ANNA SANTORA, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination

BY MR. MOSCOVITZ:

Q. What is your full name?

A. Mrs. Anna Santora.

Q. Where do you live?

A. 19 Colfax Street, Somerville.

Q. Are you a member of the Union?

A. Yes, I am.

Q. When did you join?

A. I joined when I went to Mr. Posner's office August the 14th or 15th, I believe.

Q. 1935?

A. Yes.

Q. Are you still a member of the Union?

A. I am.

Q. Did you work for the Somerset Manufacturing Company?

A. I did.

Q. When did you go to work for the company?

A. About the time they opened up.

Q. 1934?

A. Yes.

Q. You worked steadily for them until what time?

A. Until the day of the strike, when I was discharged.

Q. September 18, 1935?

A. Yes.

Q. What kind of work were you doing for the company?

A. Operating.

Q. And at the time that you say you were discharged, were you working piece work or at regular salary?

A. Yes. I was working at piece work.

Q. Piece work?

A. Yes.

Q. What basis, what rate?

A. Piece rate.

Q. How much were you getting?

A. How much was I getting?

Q. A dozen?

A. See, I worked on everything and there was all different prices on the work that I did.

Q. What were you working at at the time?

A. At the time I was discharged?

Q. Yes.

A. On lumber jackets and ski pants.

Q. What would you get a dozen for lumber jackets?

A. There was all prices on lumber jackets, you see, different styles brought different prices, and I don't remember exactly.

Q. How many hours were you working a week?

A. Forty hours when I didn't work overtime. When I worked overtime, I worked more.

Q. What was your income on the basis of the forty hour week before the strike?

A. Well, I was getting from twenty to thirty-one, although I didn't get it. Once, when I was supposed to get thirty-one dollars a week, I didn't get it.

Q. Between twenty and thirty-one dollars a week then?

A. Yes.

Q. Before the strike?

A. Before the strike.

Q. Or was it during the N. R. A.?

A. It was during the N. R. A.

Q. Did you make the same after the N. R. A.?

A. No.

Q. How much did you make after the N. R. A.

A. Eight or nine dollars.

Q. A week?

A. Yes.

Q. Same hourly basis?

A. Yes.

Q. That is what you were making at the time of your discharge?

A. Yes.

Q. I see. You stated you were discharged on what date?

A. September 18th, just before the strike. See, they thought I was going to blow the whistle for the

girls to get up, and Mrs. Evans, she told me there wouldn't be any more work for me because the girl next to her told her that I told her that I was going to blow the whistle, so she got up and told the forelady, and I heard her because I was in back of her.

Q. Who was the forelady?

A. Mrs. Evans.

Q. Who was the girl?

A. Fannie.

Q. Yes?

A. She told the forelady that Ann is going to blow the whistle.

Q. What did she mean by that?

A. For the girls to go out on strike.

Q. Did you hear her tell this to the forelady?

A. I was in back of her, but she didn't know it and Mrs. Evans told Ruby and she came back and said, "No more work for you."

Q. Where was Ruby?

A. He was across the room, and she told him.

Q. Do you know what she said to Ruby?

A. No.

Q. You know that after she spoke to this girl, she went over to Ruby?

A. Yes, she was talking to me before that, she told me, she said, "Annie, I heard you was the one that started all this trouble here," and she said, "You went to Mr. Posner," and she said, "You"—She said, "You was the one that went to Mr. Posner and told them."

MR. MOSCOVITZ:

Q. Could we have a recess for a moment? Why don't you go and have a drink of water?

(Witness is excused.)

TRIAL EXAMINER GATES:

You may be excused from the stand for a moment.

(Witness returns and resumes the stand.)

BY MR. MOSCOVITZ:

Q. Now, was this conversation with Mrs. Evans?

A. Yes, that was.

Q. And did she say anything further to you?

A. Yes, she told me that—

MR. GIROFSKY:

I object to conversations, Your Honor please, that is hearsay.

TRIAL EXAMINER GATES:

Objection overruled.

MR. GIROFSKY:

Exception.

A. And she told me "You are the one that is going to blow the whistle", and I answered her, "I have not got any whistle".

Q. Was it after that that she went to speak with Mr. Ruby?

A. It was after that, when the girl next to me kept asking me a lot of questions. She always asked me a lot of questions and I always told her—

MR. GIROFSKY:

I object to all conversations between this witness and any one other than the respondents. There is no testimony that respondents were present at the time.

MR. MOSCOVITZ:

I will withdraw the question.

BY MR. MOSCOVITZ:

Q. You say that you have had certain conversations with this girl that worked next to you?

A. Yes, I always did.

Q. And did Mrs. Evans then speak to you again?

A. When do you mean?

Q. At the time you say Mrs. Evans went to speak to Mr. Ruby; is that right?

A. Yes.

Q. Was that after you finished speaking with Mrs. Evans?

A. Yes.

Q. And after she finished talking to you?

A. Yes.

Q. Now, before she went to speak to Mr. Ruby, did she say anything further to you?

A. She told me "No more work for you." It was fifteen minutes before the girls walked out on strike.

MR. GIROFSKY:

I object to that, to all these conversations when the respondent was not shown to be present.

TRIAL EXAMINER GATES:

Objection overruled.

BY MR. MOSCOVITZ:

Q. Any further conversations?

A. No, that is all.

Q. Was it then that she went to speak to Mr. Ruby?

A. That was when she come back. She told me "No more work for you."

Q. She had gone to Mr. Ruby and then she came back and then she said, "No more work"?

A. No more work for me.

Q. Did she speak to Mr. Ruby within your vision of sight?

A. Yes.

Q. You saw her speak to Mr. Ruby?

A. Yes.

Q. She just went over to him?

A. Yes, and they both looked at me and she come back and said, "No more work for you."

Q. Then what did you do?

A. Just went and took my things and left.

Q. It was fifteen minutes after that you say that the strike was called?

A. Yes.

MR. MOSCOVITZ:

Mark this for identification.

(Document referred to marked for identification, Board's exhibit No. six, Witness Santora.)

BY MR. MOSCOVITZ:

Q. I show you Board's exhibit No. six for identification; is this your application for the Union?

A. Yes, that is my signature.

Q. Whose handwriting is the balance of the card?

A. Mr. Posner's

Q. Was it August 15th—the date you signed this signature?

A. Yes.

Q. And September 18th was the date you were discharged?

A. Yes.

MR. MOSCOVITZ:

I introduce that.

MR. GIROFSKY:

I just wish to examine this witness before this.

Cross Examination

BY MR. GIROFSKY:

Q. Where were you at the time you signed this card?

A. Mr. Posner's office.

Q. Where?

A. In Plainfield.

Q. Who was with you?

A. Ethel Rice and Mary Morano.

Q. Who invited you down there?

A. Nobody invited us. We went down there, with the girls consenting to us to go there.

Q. Who told you about going to Mr. Posner's office?

A. Us girls were talking before.

Q. Who do you mean by "us"?

A. The girls in the factory.

Q. Name them.

A. How many of them?

Q. Name them.

A. A good majority of them.

Q. Did you count them?

A. No.

Q. Do you know it was a majority?

A. I know it was a majority.

Q. You didn't count them?

A. No, but I know it.

Q. How many girls were working in the plant before the time—

A. Before the girls were discharged, there was about fifty-eight or sixty.

Q. Did you ever count them?

A. No, but I could just about tell.

Q. And was there a meeting on August 14th?

A. A meeting? There was no meeting.

Q. The day you signed this card?

A. No, there was no meeting.

Q. How much money did you receive—

MR. GIROFSKY:

I have no objection to this card.

TRIAL EXAMINER GATES:

Admitted.

(Document referred to received in evidence marked Board's exhibit number six, witness Santora.)

BY MR. GIROFSKY:

Q. How much money did you receive during the week of August 14, 1935?

A. About six dollars.

Q. Are you sure?

A. Yes.

Q. How many garments did you produce in a week?

A. I don't remember.

Q. How do you remember the price and fail to recall the number of garments that you produced?

A. What price?

Q. The money you received.

A. I know I got six dollars.

Q. You did exactly six dollars' worth of work that week, didn't you?

A. No, I did more, according to when before I got cut, I got way more than that.

Q. Wait a minute—forget about cuts. The week of August 14th, you did so many dozens of garments; isn't that right?

A. Yes.

Q. And how much a dozen were you receiving for a garment?

A. I don't know how much I was receiving at that time.

Q. But the amount of six dollars was the full

pay for the number of garments you turned out, wasn't it?

A. Yes.

Q. At the rate you were working at, at that time?

A. I suppose.

Q. So that it was not a case of receiving six dollars as a salary for one week, as much as it was receiving six dollars for actual work being turned out by you, and Mr. Fainblatt paying you that much?

A. I never was a slow worker. I should have gotten away double that amount.

TRIAL EXAMINER GATES:

Answer the question please.

BY MR. GIROFSKY:

Q. Perhaps we will put it this way: Mr. Fainblatt paid you actually that which was due to you that week; didn't he for the number of garments you produced? Isn't that right?

A. I don't understand what you mean.

Q. Now, you don't recall the number of garments you produced, do you?

A. No, I don't remember.

Q. You were paid a certain amount for a dozen garments isn't that right?

A. Yes.

Q. Now, you produced enough dozen garments to equal a total pay of six dollars? Isn't that right?

A. I don't know—I never knew what price I was getting until the end of the week.

Q. You knew under what prices you were working there, didn't you?

A. No, I didn't. He never told us until the end of the week when we got our week's pay. That is how we knew what we got.

Q. Prior to that week, how much did you receive?

A. I don't remember.

Q. How much did you receive the last week that you worked?

A. Before I went out on strike, do you mean?

Q. Yes.

A. I don't know, I think it was about six or seven.

Q. You were one of those who went out on strike, weren't you?

A. I was fired.

Q. Did Mr. Fainblatt say to you in those words that you were fired?

A. No, he didn't tell me, he didn't discharge any of the workers.

Q. He didn't discharge anyone?

A. He had the foreman or the forelady do that.

Q. Mr. Fainblatt didn't do that, did he?

A. No.

Q. You didn't see the foreman and the forelady talking to Mr. Fainblatt?

A. No.

Q. That day?

A. No, I didn't.

Q. And how much did you receive now the last week you worked?

A. I think it was six or seven dollars. I don't remember exactly.

Q. How many days in the last week did you work?

A. I just don't remember exactly how many.

Q. You don't remember?

A. No.

Q. How many hours did you work in the last week?

A. I don't remember how many hours.

Q. How many dozens of garments did you produce in the last week?

A. I don't remember.

Q. You don't remember. Now, you stated to Mr. Moscovitz that you earned thirty-one dollars a week?

A. Once I was supposed to get it, but I didn't.

Q. Did you ever get thirty-one dollars for a week's work there?

A. No, because he didn't give it to me. I was supposed to get it.

Q. What was the most you ever received in one week during the entire time you worked there?

A. I was supposed to get thirty-one dollars.

Q. How much was the most you received in the entire time you worked in the plant?

A. I think it was twenty-eight dollars.

Q. You received twenty-eight dollars? You say that under the N. R. A. you received thirty-one dollars a week?

MR. MOSCOVITZ:

She didn't testify that way, Mr. Examiner.

BY MR. GIROFSKY:

Q. How much was the most you received under the N. R. A.?

A. I just wanted to say on them books there, that Mr. Fainblatt has two sets of books.

Q. Do you know that?

A. Yes.

Q. Did you ever see them?

A. Yes.

Q. Where?

A. Because once I was short on my pay and I got eight dollars and nineteen cents and I went and

looked at it and the girl in the office, she had fourteen dollars and ninety-five cents in the books, and I told her I didn't receive that, and she said, "Pardon me"—

Q. Now, don't cry.

A. She said, "That is for the N. R. A. man to see. Here is what you got, and this is what you will get."

Q. Was Mr. Fainblatt ever prosecuted by the N. R. A.? Did you ever complain to the N. R. A. officials?

A. Please don't talk so loud. I am not deaf.

Q. Yes or no. Did you ever complain to the N. R. A. officials?

A. I don't hear you—you are talking too loud. I didn't have a chance to.

Q. You never did, did you?

A. No.

Q. Who told you there were two sets of books?

A. Nobody, I seen them.

Q. Where?

A. In the office.

Q. When?

A. When I was short in my pay.

Q. What day?

A. I don't remember what the day was.

Q. What month?

A. I don't remember what the month was, but it was during the N. R. A.

Q. How long did the N. R. A. last? Who showed you the books?

A. The girl in the office.

Q. What is her name?

A. Jean.

Q. Where is she?

A. I don't know where she is.

Q. What is her last name?

A. I think it is Sanders.

Q. Where does she live?

A. Somerville.

Q. Where were the books in the office when you saw them?

A. Well, she had one book in her hand when I asked her, and she showed me fourteen dollars and ninety-five cents and I told her I didn't receive that amount, and she said, "Pardon me," and she put it back. She said, "That is for the N. R. A. man." She said, "I will tell you in a minute what you got," and she picked up a smaller book, and she showed me eight dollars and ninety-five cents, and she said, "That is what you got."

Q. Why didn't you complain to the N. R. A. man too?

A. I didn't have a chance to.

Q. Any one prevent you from doing it?

A. No.

Q. You continued working there then for how many months after that?

A. Until the day of the strike when he fired me.

Q. How long after?

A. I just don't remember exactly.

Q. One month?

A. I don't remember exactly.

Q. Two months?

A. I couldn't say.

Q. Three months?

A. I told you I couldn't say.

MR. MOSCOVITZ:

The witness says she doesn't remember.

MR. GIROFSKY:

She seems to have a vivid recollection of other things.

MR. MOSCOVITZ:

It is quite easy to understand why she would have that, but the answer is she doesn't remember.

BY MR. GIROFSKY:

Q. You were already a member of the Union on September 18th, 1935, weren't you?

A. Yes, I was.

Q. And you were one of those who had agreed to go out of employment on the 18th of September, 1935, weren't you?

A. Agreed to do what?

Q. Agreed to leave the plant on September 18th, 1935?

A. I was going to go with the rest of the strikers, yes.

Q. You intended to leave of your own volition, didn't you?

A. Yes.

Q. And have you received any pay while you were out on strike?

A. I have.

Q. How much?

A. Five dollars.

Q. What for?

A. For nothing.

Q. For nothing. And are you satisfied with the pay that you are receiving at the present time?

A. Well, sure.

Q. Are you married?

A. Yes. I have two children and a husband.

Q. Is your mother working; your father?

A. No, I have no father.

Q. Is your husband working?

A. He is now, but he wasn't.

Q. Ever on relief?

A. My mother was, but I had to move with my mother on account of the conditions of that factory and that is why I went to Mr. Posner.

Q. And you never applied for further employment, did you?

A. No.

Q. Mr. Posner has not placed you in employment as he has Miss Katz?

A. No, he didn't do that with me.

Q. You are an operator, aren't you?

A. Yes.

Q. Is Miss Katz an operator?

A. Yes.

Q. Do you consider yourself a better operator than Miss Katz?

A. I don't know how fast she was, but I know I was about the highest paid one in there, so I must have been.

Q. Have you asked Mr. Posner for employment?

A. No, I have not.

MR. MOSCOVITZ:

Mr. Examiner, I don't see where this has anything to do with the issue. Mr. Posner is not an employment agency.

MR. GIROFSKY:

He seems to be.

MR. MOSCOVITZ:

He is a Union representative.

BY MR. GIROFSKY:

Q. When was the first meeting after August 14th?

A. There was no meeting on August 14th.

Q. When was the first meeting of the Union that you attended?

A. August 21st.

Q. Where?

A. In Raritan.

Q. And did you sign on the 21st?

A. No, I signed in Mr. Posner's office on August 14th.

Q. You were one of those that called the meeting?

A. I didn't call—all us girls called.

Q. You were one of those that called the meeting?

A. Yes.

Q. And the meeting was only open to those employees of the plant here?

A. No.

Q. And Mr. Posner?

A. No, the door was open. Anybody could have went in.

Q. Anyone eligible to join outside the employees of the plant?

A. I don't know. I didn't inquire.

Q. And did anyone else appear there besides Mr. Posner representing any other organization?

A. Not that I know of.

Q. Did you have an opportunity at that meeting to elect any one else to represent you besides Mr. Posner?

A. No, we didn't want anybody else. We wanted Mr. Posner.

Q. Now, how many were at that meeting?

A. I don't know exactly how many were there.

Q. You didn't count them, did you?

A. No.

Q. And who was at the meeting?

A. The girls and Mr. Posner.

Q. Name them.

A. I can't name every one of them, that was there.

Q. Name them, those that you do know.

A. Mary Morano, Ethel Rice, Mary and Elizabeth, and Angelina, and quite a majority of others. I can't name them all.

Q. You can't name any more, can you?

A. No.

Q. When was the next meeting?

A. September 28th.

Q. September what?

A. I mean August 28th.

Q. Where was that meeting?

A. The same place.

Q. And by the way, the first meeting that you elected Mr. Posner to represent you—

A. Yes, we did.

Q. The first meeting?

A. Yes, we did.

Q. That was on the 21st?

A. Yes.

Q. Did you hear Miss Katz and the others testify that there was no representative elected at the meeting on the 21st?

A. Did I hear what?

Q. Miss Katz stated that Mr. Posner was not elected as a representative at the meeting of the 21st?

A. I didn't hear nothing of the kind.

Q. Are you sure he was elected on the 21st?

A. Yes.

Q. And at the meeting held on the 28th, how many were present?

A. I don't know exactly the amount.

Q. Did you count them?

A. No.

Q. Who was present?

A. The same girls I told you and a lot others.

Q. Who were the others?

A. I can't name them right off the block—I don't know all these girls.

Q. Was that the meeting where the strike was agreed upon?

A. No.

Q. When was the next meeting?

A. I think it was September 5th.

Q. Where?

A. Same place.

Q. Raritan?

A. Yes.

Q. Who was present?

A. All the girls that I mentioned with a lot of others.

Q. Who were the others?

A. I can't say right off hand.

Q. You can't name them, can you?

A. No.

Q. No?

A. No.

Q. And did you count the number there?

A. No, I didn't.

Q. You don't know how many were there?

A. No, not exactly.

Q. And it was at that meeting that the strike was called?

A. No.

Q. Was there another meeting?

A. Yes.

Q. Where was that held?

A. I think it was at the Recreation Hall.

Q. When?

A. About the 17th, I think, I am not quite sure.

Q. The day before the strike?

A. Yes.

Q. And you were present?

A. Yes.

Q. And you agreed to go on strike?

A. Yes.

Q. And who was there?

A. All the girls.

Q. How many?

A. I don't know exactly the amount.

Q. Did you count them?

A. No, I didn't.

Q. Name the girls?

A. I can't name each and every one of the girls.

Q. Name the girls there?

A. I can't name every one of the girls there.

Q. That is the meeting when the strike was called; is that right?

A. Next to the last meeting, yes.

Q. Was there another meeting after that?

A. After the strike?

Q. After the strike. Did you pay any dues to the Union?

A. No.

Q. Never paid?

A. No.

Q. That is all.

Redirect Examination

BY MR. MOSCOVITZ:

Q. You didn't have much chance to pay dues, did you?

A. No.

MR. GIROFSKY:

I object to that.

BY MR. MOSCOVITZ:

Q. Mrs. Santora, these girls that you saw at the various meetings, will you tell me whether or not they were girls you had seen at work for the Somerset Manufacturing Company?

A. Oh, yes, they were girls I had seen there. We weren't allowed to talk in the factory, we had signs all over "No talking," so we didn't know the girls personally.

MR. GIROFSKY:

It is not responsive. I ask that that be stricken.

TRIAL EXAMINER GATES:

It may be stricken.

BY MR. MOSCOVITZ:

Q. But are you sure, I mean, that the girls that you saw at these meetings were girls you had seen at work?

A. Yes, every one of them.

Q. No others?

A. No others.

(Witness excused.)

MRS. ELIZABETH SHOAKA, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:—

Direct Examination

BY MR. MOSCOVITZ:

Q. Where do you live?

A. 27 Thompson Street, Raritan, New Jersey.

Q. Did you work for the Somerset Manufacturing Company?

A. I did.

Q. When did you go to work for them?

A. I started the latter part of August and then he laid me off—

Q. 1934?

A. Yes.

Q. And then—

A. He laid me off before Christmas.

Q. 1934?

A. 1934.

Q. Yes.

A. Then he called for me after Christmas, I don't remember just when, 1935, he called me back.

MR. GIROFSKY:

Who is she referring to?

BY MR. MOSCOVITZ:

Q. Whom do you mean when you say "he"?

A. Ruby.

Q. The foreman?

A. Yes.

Q. When you say he laid you off; whom do you mean?

A. I don't know who told Ruby, but he said "I will send for you."

Q. He is the one that laid you off and called for you?

A. Yes.

Q. Then when you came back, did you work continuously?

A. I did.

Q. When?

A. Until August 15th, 1935.

Q. What kind of work were you doing for the company?

A. An operator.

Q. The same sort of work that Mrs. Santora was doing?

A. I was doing the same work, and on skirts I was on another machine. I wasn't doing the same kind of stuff.

Q. On the same floor?

A. Yes.

Q. How much did you make—how much were you making? Were you working piece work or hours?

A. Piece work.

Q. You were considered one of the very fast operators or slow ones?

A. Well, kind of fast, not so fast and not so slow, medium.

Q. And you worked for the company during the N. R. A., didn't you?

A. Yes.

Q. Did you work piece work then, too?

A. I did.

Q. Do you remember how many hours you used to work a week?

A. Forty to fifty hours, sometimes even more than fifty.

Q. You would work overtime?

A. I did.

Q. Do you remember what your piece work rate was during that period?

A. See, when I was on that machine during the N. R. A., why, he put me on time work, and I was making thirteen dollars, and then I worked overtime. I never got paid no more than thirteen—even if I worked overtime or not, because he considered I was just a learner on that machine.

Q. So, no matter how many hours you worked, you got—

A. I got thirteen dollars a week.

Q. Even though you were supposed to be receiving piece work?

A. See, he said I would be on time work until I get fast on the machine.

Q. Were you fast or slow on the machine?

A. I wouldn't consider slow, medium.

Q. How many pieces were you turning out a day?

A. At first I was a learner, forty and fifty a day, but now when I got used to it, I pulled out between fifty and sixty, sometimes even over that.

Q. During that period were you still making thirteen dollars a week?

A. No, I was on time work. He put me on piece work then and he didn't even tell me he was putting me on piece work and that following week I only got eight dollars and change.

Q. During the N. R. A. you were making thirteen dollars a week?

A. Yes, but at the same time during the N. R. A. he gave me the eight dollars when I didn't know I was on piece work.

Q. So instead of getting thirteen dollars you got eight dollars?

A. Yes.

Q. After the N. R. A. did you receive the same income, thirteen dollars?

A. No.

Q. What happened after the N. R. A.?

A. I was on piece work after the N. R. A., as much as I made I got.

Q. Did you work any regular number of hours a week?

A. Then, after the N. R. A., I worked around forty.

Q. You say you averaged forty hours a week?

A. Yes.

Q. Up to the time of the last day with the companies?

A. Yes.

Q. Do you know what your income was during those weeks?

A. I don't remember exactly; but I remember I got a lot of times between nine and twelve dollars, the most.

MR. GIROFSKY:

I wish counsel would have time fixed.

BY MR. MOSCOVITZ:

Q. Would you say that was your average income between nine and twelve dollars?

A. Yes.

Q. Did you ever receive less than nine dollars a week?

A. Maybe I did, I don't remember.

Q. Did you ever receive more than twelve dollars a week?

A. No.

Q. Did you join the Union?

A. I did.

Q. When did you join?

A. I joined August 14th, the same day as the girls went to Plainfield.

Q. Are you still a member of the Union?

A. I am.

Q. Are you employed at the present time?

A. I was working, then I joined because I needed the money. My husband got ill after I got married and I needed the money, so Mr. Posner gave me a job in Plainfield, and I worked for the Stars Dress Shop.

Q. Before you get to that—you joined the Union August 14th, 1935?

A. I did.

Q. How long did you work for the company after that day?

A. What day?

Q. August 14th?

A. For what company?

Q. Somerset Manufacturing Company?

A. I was laid off. He discharged me. He said I was causing too much trouble. On the day between August 15th, was the next day after I signed.

Q. You mean you were let out the day after you signed for the Union?

A. He discharged me. He said, "You are causing too much trouble."

Q. Who is he?

A. Mr. Ruby, the foreman.

Q. Tell me what happened.

A. I waited for work at five minutes to eleven.

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Mrs. Evans, the forelady, she came to me and I asked for work, and she said, "Mr. Ruby will attend to you," and when I came by—when he came by me, he said, "You are causing too much trouble. Get your work marked and go home," so I got my word marked and went home.

Q. Had you, before your discharge, had you ever any conversation with Mr. Fainblatt regarding the Union?

A. Not Mr. Fainblatt.

Q. With whom?

A. With Mr. Ruby.

Q. When was that?

A. This was about a week before I was discharged, and Mr. Ruby told Mr. Fainblatt—Mr. Fainblatt told Mr. Ruby to take me downstairs. So Mr. Fainblatt asked me to come in to his office, so when I got into the office, he waited until the book-keeper went out, and he says to me, he says, "Don't be afraid, I won't hurt you."

Q. Who was that?

A. Mr. Fainblatt. He said, "who approached you to sign the Union—Frank or his wife?" and I said, "Nobody," because neither one of them had approached me.

Q. Was there any further conversation between you and him?

A. No more then. I went up to work.

Q. Did you ever have any further conversation with him at any other time?

A. No.

Q. It was the date you already referred to when Mr. Ruby spoke with you that you were discharged?

A. Yes.

Q. That is the last you had anything to do with either Mr. Fainblatt or Mr. Ruby? Is that right?

A. Yes.

Q. Now, after that date, or after the date of your discharge, did you go to work for anyone else?

A. Yes, I did.

Q. From—for whom?

A. Stars Dress Shop.

Q. When?

A. I think it was August 22nd that I went to work.

Q. Where are they located?

A. Plainfield on Richmond and South Streets.

Q. How long did you work there?

A. Around four or five weeks, because I needed the money.

Q. And after the expiration of the four or five weeks,—

A. Well, then there wasn't much work so he laid me off.

Q. How much were you getting there a week?

A. First seventeen—he says if I work there a couple of more weeks, he would give me from twenty to twenty-three as a good dressmaker.

Q. Was it the same work you were doing for the Somerset Manufacturing Company?

A. Yes, it was, hemming.

Q. After the expiration of that period, you came back to Somerville? Did you work then for anyone else?

A. No, I didn't, because I came for the strike.

Q. You are still a striking employee?

A. Yes.

Q. Are you receiving relief payments from the Union?

A. I am.

Q. How much do you get?

A. Five dollars.

Q. Do you get it every week?

A. I do.

Q. Do you get it from the International Union?

A. Yes, I do.

Q. What is that money for? Is it for you to live on?

A. It is.

Q. And during this period, you still continued in your striking activities?

A. I do.

MR. MOSCOVITZ:

Please mark this for identification.

(Document referred to marked for identification, Board's exhibit number seven, Witness Shoaka.)

BY MR. MOSCOVITZ:

Q. I show you Board's exhibit number seven, marked for identification, and I ask you what it is.

A. That is my application card for the Union.

Q. Is that your signature?

A. Yes.

Q. Is the rest of the card in your handwriting?

A. Yes, I did.

Q. You filled it all out?

A. I did.

MR. MOSCOVITZ:

I offer it in evidence.

(Document referred to received in evidence marked Board's exhibit number seven, Witness Shoaka.)

Cross Examination

BY MR. GIROFSKY:

Q. You say you joined the Union August 14, the date of this card?

A. I did.

Q. Where did you sign it?

A. Over at my house.

Q. Who brought it to you?

A. I met one of my girl friends, Mary Morano, when she came back from Plainfield, and I invited her to my house and she had one of those cards and I asked her could I see it, so I joined it right there and then.

Q. She told you she had the cards?

A. Yes, she had some cards.

Q. You didn't know she had cards until she spoke to you about them?

A. No.

Q. Just a moment—who else was with her?

A. Anna Santora.

Q. Who else?

A. Ethel.

Q. What is her last name?

A. Rice.

Q. Anyone else?

A. That is all—I met them coming from Plainfield.

Q. She invited you to join the Union?

A. No, I invited myself.

Q. You invited yourself, and you say you were laid off the day following the signing of this card?

A. I imagine so.

Q. Why, don't you know when you were laid off?

A. I believe I was laid off around August 15th.

TRIAL EXAMINER GATES:

Admitted.

Q. August 15th, you say?

A. After I signed that card.

Q. You are not certain?

A. I am not certain.

Q. You told Mr. Moscovitz in certain terms that you were laid off the day following the joining of the Union?

A. The day after I joined I was laid off.

Q. You joined the Union the date you signed the card? Have you paid any dues?

A. No, I never paid any dues.

Q. Did you attend a meeting the night of the 14th?

A. There was no meeting the 14th.

Q. You are charging the respondents with having been discharged by them on August 21st, that is not right, is it?

A. No, it was not the 21st.

Q. It was sometime before the 21st, was it not?

A. Yes.

Q. And had you been laid off before August 14th—you had, hadn't you? Before Christmas of that year you were laid off; weren't you?

A. Yes, because he didn't have no work for me.

Q. You came back later and received work?

A. He sent for me.

Q. You went back?

A. Yes.

Q. Were you ever laid off before, ever laid off after that, between that time and the time you went out on strike?

A. No.

Q. Now, you had your slow seasons and your busy seasons at the plant, didn't you?

A. Yes.

Q. And it was at that time, just before Christmas, that they had a slow season; isn't that right?

A. Yes.

Q. Now, prior to your first lay-off at Christmas, how long had you been working?

A. I started to work there the latter part of August, when they opened up.

Q. 1934?

A. 1934.

Q. Is that right?

A. Yes.

Q. You had had steady employment?

A. For a while.

Q. Then your work slowed up, didn't it?

A. Yes.

Q. To the point where you had little or no work to do, isn't that right?

A. Yes.

Q. And it was nothing unusual for the work to slow up, was it?

A. No.

Q. And then you went up to the point where your work had slowed to such an extent that you were laid off at Christmas time, isn't that right?

A. Yes.

Q. It was nothing unusual for you to be laid off at that time, was it? You didn't consider it as such?

A. No.

Q. Then you went back to work; is that right? Now when was the first meeting you attended?

A. August 21st.

Q. The year?

A. 1935.

Q. Where?

A. Harmony Hall, Colfax Street.

Q. Where?

A. At Raritan.

Q. And how many were there?

A. I don't know just exactly how many.

Q. Did you count them?

A. No, I didn't.

Q. Who was there?

A. There was my sister, Mary Gecik, Margie Hovak, Mary Morano, Anna Santora, Ethel Rice and I think Fay Katz was, and Sophie Ziegler, and there were some of those there that are still working in the shop. Do you want their names too?

Q. Yes.

A. I don't know her last—

MR. MOSCOVITZ:

I object to the introduction of those who may still be working in the shop.

MR. GIROFSKY:

And I can assure you, Mr. Examiner, that these names of these persons will not—

MR. MOSCOVITZ:

I don't think it is necessary to inquire further into the matter.

TRIAL EXAMINER GATES:

I ruled on that point yesterday and I rule the same today that the names may not be given.

MR. GIROFSKY:

Take an exception.

BY MR. GIROFSKY:

Q. Some of the girls, however, who were there didn't carry on with their Union activities; is that right?

A. Which ones?

Q. Some of the girls who are still working today?

A. There was just one or two.

Q. They went back to work?

A. Yes, they did.

Q. They are still working there today, aren't they?

A. Yes.

Q. That is all you can name, is that right?

A. Yes.

Q. At that meeting, was that the meeting at which Mr. Posner was elected to represent you?

A. He was.

Q. By the girls you named?

A. By the girls.

Q. You named?

A. I named? Of course, there were more than I named.

Q. When was the next meeting?

A. August 28th.

Q. Where was that held?

A. Harmony Hall, Colfax Street, Raritan, New Jersey.

Q. Who called that meeting?

A. The girls.

Q. What girls?

A. The Union girls.

Q. Name them?

A. Sophie Zeigler, Mary Gecik, Mary Morano,

Anna Santora, Frances Cicero, Fay Katz, Ethel Rice, Carmella Recchia. There is some girls I don't know their last names.

Q. That is all you can name?

A. I don't know their last names.

Q. Did you count the girls?

A. No, I didn't.

Q. You don't know how many were there?

A. No.

Q. Was that the meeting at which the strike was called?

A. No.

Q. At that meeting you were not working for the Somerset Manufacturing Company?

A. No.

Q. You were not?

A. No.

Q. At the meeting before that you were not working?

A. No.

Q. You were out of the employ of the company before the strike occurred on September 18th?

A. Yes.

Q. Is that the answer?

A. He discharged me.

Q. I didn't ask you that.

MR. GIROFSKY:

I ask that that remark be stricken from the record.

(Question and answer read.)

TRIAL EXAMINER GATES:

The record is clear. Leave it in.

BY MR. GIROFSKY:

Q. Did you ever seek any employment elsewhere?

A. After I stopped working in Plainfield, or where?

Q. How long did you work in Plainfield?

A. Four or five weeks.

Q. Why did you stop working at Plainfield?

A. Because the dress shops got slow and he laid me off.

Q. Did you ever go back there for employment?

A. No, because they were slow.

Q. Did they ever call you back?

A. They haven't started working yet good.

Q. Are you satisfied to work under those conditions?

A. What conditions?

Q. Working for a few weeks and then being laid off for an indefinite period of time, and wait until they call you back?

A. I am.

Q. You are. You are still waiting for them to call you back in Plainfield?

A. I am waiting for the strike.

Q. Yes or no, are you waiting for them to call you back at Plainfield?

MR. MOSCOVITZ:

She answered the question. She is waiting for the strike.

A. I am waiting for the strike to end.

BY MR. GIROFSKY:

Q. And is it going to end?

A. I don't know.

Q. How long will that be?

A. I don't know.

Q. Have you attempted to go back for employment at the Somerset Manufacturing Company?

A. I don't know.

BY MR. MOSCOVITZ:

Q. Did you hear the last question?
(Question read to the witness.)

A. Yes.

BY MR. GIROFSKY:

Q. When did you attempt to go back?

A. I haven't attempted yet.

Q. Then you didn't go back yet?

A. No.

Q. Then why don't you answer? How long did Mr. Posner tell you this strike was going to last?

A. We don't know.

Q. Did he tell you it was going to last longer?

A. He don't know.

Q. Did you ask him how long it was going to last?

A. No, because we don't know.

Q. You are interested in going back to work, aren't you?

A. Well, yes.

Q. Why didn't you ask him when he was going to put you to work?

MR. MOSCOVITZ:

I object to the question, Mr. Examiner. Mr. Posner can't make any guarantees of employment.

TRIAL EXAMINER GATES:

Objection sustained.

MR. GIROFSKY:

Exception.

BY MR. GIROFSKY:

Q. Now, you testified you attended two meetings. When was the next meeting held?

A. I don't know because I was working. I didn't attend it.

Q. Where?

A. In Plainfield.

Q. What time of the day are the meetings held?

A. It was held after work, but I wasn't home then.

Q. You never attended any other meetings of the strikers before the strike was called here?

A. Sure, I have been at the first and second meeting.

Q. What was the last day, when was the last day you worked in Plainfield?

A. I don't remember.

Q. Was it the day before the strike in Somerville or after the strike?

A. Will you repeat that please?

Q. The last day you worked in Plainfield, was that before the strike was called in Somerville?

A. After.

Q. After the strike was called. Now, the strike was called September 18th; you were out of the employ of the Somerset Company on August 14th, is that right?

A. Yes, August 15th.

Q. Now, how long were you out of work before you started to go to work in Plainfield?

A. About a week, a week and a half.

Q. A week or a week and a half, and you worked how many weeks?

A. Four or five weeks.

Q. That would bring us down to your working at Plainfield at the time of the strike?

A. Yes.

Q. Then you were mistaken when you said you left your work in Plainfield before the strike, weren't you?

A. I don't—

MR. MOSCOVITZ:

She didn't say that, Mr. Girofsky.

BY MR. GIROFSKY:

Q. You were still working in Plainfield at the time of the strike in Somerville, the time it was called, weren't you?

A. Yes, that's right.

Q. You had no affiliation or connection with the Somerset Manufacturing Company on September 18th, 1935?

MR. MOSCOVITZ:

She testified she was discharged.

MR. GIROFSKY:

Now, Mr. Moscovitz, this witness is testifying.

BY MR. GIROFSKY:

Q. You were no longer in the employ of the Somerset Manufacturing Company on September 18, 1935?

A. I was discharged.

Q. Yes or no.

A. No.

Q. You were working then for the Plainfield Company?

A. Yes.

Q. Right. Now, when you were working in Plainfield, you considered yourself an employee there, didn't you?

A. Yes.

Q. Did you consider yourself an employee of the

Somerset Manufacturing Company at the same time?

A. Yes.

Q. Then you considered yourself an employee of both companies?

A. Yes.

Q. Is that right?

A. Yes.

Q. Now, you never attended any other meetings, did you?

A. No.

Q. I think that is all.

Redirect Examination

BY MR. MOSCOVITZ:

Q. You say you were discharged?

A. I was.

Q. After you were discharged you went to work for a while in Plainfield?

A. Yes.

MR. GIROFSKY:

That has all been gone over, Mr. Moscovitz. I don't think that is necessary.

MR. MOSCOVITZ:

I wish to clear it up a little.

MR. GIROFSKY:

I don't think it is—that it needs any clearing. Witness has been specific.

TRIAL EXAMINER GATES:

If there are some specific questions you think need clearing up, you may do so.

BY MR. MOSCOVITZ:

Q. These one or two girls that were at the Union

meetings that you say are still working for the company—are they girls that joined your Union or didn't they join it?

A. I don't understand the question.

Q. You testified before, in answer to Mr. Girofsky's questions, that there were one or two girls who were at the meetings in Raritan who are still working for the company and who remained at work for the company and did not go out on strike?

A. Yes.

Q. That is right, isn't it?

A. Yes.

Q. Had either one of those girls joined the Union, do you know?

A. I don't know if they did or not.

MR. GIROFSKY:

I object to any question—I withdraw the objection.

TRIAL EXAMINER GATES:

You may answer.

BY MR. MOSCOVITZ:

Q. Do you know whether or not they were members of your Union?

A. I don't know.

Q. That is all.

(Witness excused.)

ANGELINA MATTEIS, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination

BY MR. MOSCOVITZ:

Q. What is your name?

A. Angelina Matteis.

Q. Where do you live?

A. 13 Anderson Street, Raritan, New Jersey.

Q. Were you employed by the Somerset Manufacturing Company?

A. I was.

Q. When did you go to work for the company?

A. Well, I worked there for about a year, but I didn't—can't remember when I first got it.

Q. Worked there for a year?

A. Yes.

Q. When was the last day you worked there?

A. August 22, 1935.

Q. What kind of work did you do?

A. I am an operator.

Q. Same sort of work Miss Santora does?

A. Yes.

Q. Did you work piece work?

A. I did.

Q. And what were the hours that you were working the week prior to your discharge?

A. I worked eighteen hours.

Q. That week?

A. Yes.

Q. Do you recall what your income was for that week?

A. I don't remember.

Q. Do you remember what your piece work rate was during that week?

A. Well, I couldn't say because we had just started the winter work and didn't have much of a chance to get started on it.

Q. You don't know how much you were getting for a dozen?

A. Yes, we were getting ninety-eight, but we were cut down to eighty-three cents a dozen and fifty-four cents.

Q. And you were getting sixty-eight cents a dozen or fifty-four cents a dozen?

A. Sixty-three and fifty-four, from ninety-eight cents.

Q. And the ninety-eight cents is what you were getting during the N. R. A.?

A. Yes.

Q. Right after that you got these cuts—would the two rates that you specified depend on the kind of work that you were doing?

A. Yes.

Q. What kind of work would you do to get the higher rate?

A. There wasn't very much difference, but I don't remember because I have been working on different stuff since then.

Q. What were the average hours which you would work?

A. Forty hours.

Q. And this was from the expiration of the N. R. A. up until the date of your discharge?

A. Yes.

Q. And you say you averaged forty hours a week?

A. About.

Q. Can you tell me what your average income was weekly during that period?

A. From eight to twelve dollars.

Q. Eight to twelve dollars. Now, will you tell me when you joined the Union?

A. The day after the first meeting, August 22nd, 1935.

Q. Are you sure it was August 22nd or August 21st?

A. August 21st, it was, I was discharged August 22nd.

Q. After having joined the Union?

MR. GIROFSKY:

I ask that that remark in the answer that she was discharged on the 22nd be stricken, it is not responsive.

TRIAL EXAMINER GATES:

Strike it.

BY MR. MOSCOVITZ:

Q. You joined the Union, you say, August 21st?

A. Yes.

Q. Now, before joining the Union had you had any discussion with any one about the Union?

A. I did.

Q. With whom?

A. You mean talking with the girls or—

Q. You had spoken with the girls about it?

A. I did.

Q. Girls also employed at the Somerset Manufacturing Company?

A. Yes.

Q. How long a period before you joined the Union?

A. The day of the first meeting I was talking to girls outside and I imagine my discharge was due to the fact that it could have been overheard.

MR. GIROFSKY:

I ask that that be stricken.

TRIAL EXAMINER GATES:

Just a minute—

BY MR. MOSCOVITZ:

Q. You say the day after—

MR. GIROFSKY:

The answer was not responsive and I ask that any reference to discharge be stricken from the record as irresponsible.

TRIAL EXAMINER GATES:

Hasn't she already testified as to leaving the employment?

MR. MOSCOVITZ:

- I will lead up to that. What I want from this witness is whether or not she discussed with co-workers the Union.

A. I did, outside the plant. Not during working hours.

BY MR. MOSCOVITZ:

- Q. Before the date of the alleged discharge in this case, had you spoken with co-workers?

A. Yes.

Q. When was it?

A. The 21st, the day of the first meeting. I asked the girls if they were going to the meeting that night, and there were some girls there who are working in the plant now, and they could have gone back and told them.

Q. Now, did you have any discussion with any one of your supervisory employees?

A. No, I did not.

Q. Did Mr. Ruby speak to you about the Union?

A. No.

Q. Or Mrs. Evans?

A. No.

Q. Did you have any discussion with Mr. Fainblatt about the Union?

A. No.

Q. Now, when was the last day you say you worked for the company?

A. The last day was August 22nd.

Q. That was the day after you joined the Union?

A. Yes.

Q. What happened to you on that day?

A. Well, the day before I went home, about thirty, because I was not feeling well, so I went in the next morning and the work usually starts at eight o'clock, so I asked for work and I was told to wait.

Q. By whom?

A. By Mrs. Evans, and Ruby told me to wait too, and so I waited until eight-thirty and Mr. Ruby called me to the side where the work was and he told me, he said, "I am sorry you are causing too much trouble. I have no more work for you." I said, "Can you prove it?", and he said, "No," so I said, "It is all right with me," so I took my belongings, had my work marked and I went home.

Q. And that is all that happened that day?

A. Yes.

Q. Before this had you attended any meetings, conducted by Mr. Fainblatt?

A. In the factory, yes.

Q. At which the Union question was brought up?

A. Yes.

Q. Are those the meetings that have been referred to already in these proceedings as the meetings attended by the mayor?

A. Yes.

Q. Were you there?

A. Yes.

Q. Were you also at the meeting attended by the sheriff of the county?

A. No.

Q. Did you attend the meeting where Mr. Hawley spoke?

A. Yes.

Q. Have you heard the testimony given by other witnesses in this case?

A. Yes.

Q. Have you heard the testimony given by other witnesses in this case regarding the conversations and statements made by the mayor and the sheriff?

A. Yes.

Q. Have you anything additional to add to that testimony?

A. No.

Q. You corroborate what was said?

A. Yes.

MR. MOSCOVITZ:

Will you mark this for identification? Board's exhibit number eight, please.

(Document referred to marked for identification, Board's exhibit number eight, Witness Matteis.)

MR. MOSCOVITZ:

I show you Board's exhibit number eight marked for identification. Will you tell me what that is?

A. This is the card of application.

Q. Is it in your signature?

A. Yes.

Q. Is the balance of the card in your handwriting?

A. No.

Q. Whose handwriting?

A. I imagine it is Mr. Posner's. In fact, I am sure it is Mr. Posner's.

✓ Q. Was it filled out in your presence?

A. It was.

Q. By Mr. Posner?

A. Yes.

Q. Then you signed it?

A. I signed it.

Q. And the writing, is that writing in response to answers which you gave?

A. Yes, it is.

MR. MOSCOVITZ:

I offer it.

Cross Examination

BY MR. GIROFSKY:

Q. Why did you imagine it was in Mr. Posner's handwriting?

A. At first I didn't know.

Q. You weren't sure?

A. Not when I first glanced at it.

Q. Now you are sure?

A. I am positively sure.

Q. Where was this signed?

A. Where was it signed?

Q. By you?

A. At the headquarters.

Q. Where is the headquarters?

A. Depot Square, Somerville, New Jersey.

Q. You didn't have any headquarters on August 21st, 1935, did you?

A. No, it was the first meeting.

Q. Where was the first meeting?

A. Harmony Hall.

Q. When was the first meeting?

A. August 21st.

Q. You are not sure when you did sign it, are you?

A. It was signed on August 21st.

Q. Why are you sure?

A. Because that is the date.

Q. Why are you sure of the date?

A. I don't know what you mean.

Q. You know the date, tell me why you are certain of the date.

A. Because that is when I signed it.

Q. What day of the week was it?

A. Oh, I don't know the day of the week.

Q. You don't know the day of the week. You are not certain about Posner's writing on here either, are you?

A. I am.

Q. When you first answered Mr. Moscovitz, you said you imagined it was, didn't you?

A. Yes, I did.

Q. And are you just as certain about your testimony with respect to the other questions and matters under Mr. Moscovitz' examination?

TRIAL EXAMINER GATES:

Is there any objection to this exhibit?

MR. GIROFSKY:

No.

(Document referred to received in evidence, marked Board's exhibit number eight, witness Matteis).

BY MR. GIROFSKY:

Q. —as you are about your answer? That is, that this card was signed at headquarters on Depot Square on August—1935?

A. That was an error.

MR. MOSCOVITZ:

The witness corrected herself on her testimony.

BY MR. GIROFSKY:

Q. Are you in error with any of your other testimony?

A. No, I am not.

Q. Are you sure of that?

A. Yes, I am sure.

Q. How many attended the first meeting?

A. I couldn't say how many really were there.

Q. You didn't count them?

A. No, I didn't, but I could name some of them that were there.

Q. Who?

A. Mary Morano, Sophie Ziegler, Helen Lee, Fay Katz, Ethel Rice, Mary Morano, Margie Hovan, Mary Spatt, Mayme Hobbs, Gertie Fields, Josephine Hurley, Ethel Hicks.

Q. Can't name any more?

A. Ethel Rice and myself.

Q. Can't name any more?

A. No, I can't.

Q. What time of the day was the meeting held?

A. Between a quarter to six and six o'clock.

Q. That is the meeting when Mr. Posner was elected your representative?

A. Yes.

Q. Of you girls?

A. Yes.

Q. That you just named?

A. Yes.

Q. And you weren't working on August 21st, were you?

A. I was.

Q. At the time of the meeting?

A. No, not at the time of the meeting.

Q. Have you worked since?

A. Yes, I have.

Q. Where?

A. Plainfield.

Q. Where?

A. Watchung Avenue.

Q. What is the name of the place? Who is the employer?

A. Mr. Robonna.

Q. Where does he live?

A. I don't know.

Q. How many girls were employed there?

A. I didn't count them, I would not know.

Q. You don't know? How many machines in the place?

A. I wouldn't know.

Q. How long were you working there?

A. A week.

Q. What kind of garments did you make?

A. Skirts.

Q. How many dozen skirts did you produce in that week?

A. I don't know how many dozens I did.

Q. How many hours did you work that week?

A. About thirty-seven.

Q. Now, when did you go to work there?

A. About a month ago.

Q. A month ago. Can you fix the date?

A. No, I can't.

Q. Was it before the strike?

A. No, it was not before the strike.

Q. Do you consider yourself an employee of the —did you consider yourself an employee of this Plainfield shop?

A. Temporary employee.

Q. At the time, a temporary employee; at the same time did you consider yourself an employee of the Somerset Manufacturing Company?

A. I did.

Q. You were not working there at the time, were you?

A. No, I was not.

Q. Now, if that work at Plainfield had continued, you still would have considered yourself an employee, would you?

A. I was not going to stay there, no.

Q. You didn't like it there, did you?

A. I didn't say I didn't like it.

Q. You had to pay transportation back and forth?

A. Yes.

Q. Why didn't you continue working there?

A. Because it was only temporary. As he had a lot of work there, he needed some workers, so Mr. Posner sent us down there to help out.

Q. Has Mr. Posner sent you anywhere else?

A. No, he has not.

Q. Have you applied for work anywhere else?

A. No.

Q. How much are you receiving today?

A. Five dollars a week.

Q. What do you do for the five dollars?

A. Picket.

Q. Where?

A. We used to picket in front of the factory, but we picket in front of Heuy's now.

Q. What are your duties as a picket?

A. Walk up and down with signs on.

Q. What else?

A. Nothing else.

Q. Did you do anything else as a picket besides walk up and down?

A. No, that is all.

Q. At any time that you picketed?

MR. MOSCOVITZ:

I object to this line of examination. There has been no direct testimony on it and it has no relevancy.

TRIAL EXAMINER GATES:

Objection overruled.

BY MR. GIROFSKY:

Q. When was the first meeting you attended?

A. August 21st, 1935.

Q. And you have already told us the names of the girls at that meeting and a number you couldn't tell; is that right?

A. Yes.

Q. You didn't count. That is the meeting when Mr. Posner was elected a representative, you say?

A. Yes.

Q. When was the next meeting?

A. The week after.

Q. Where?

A. Harmony Hall.

Q. What date?

A. 28th of August.

Q. What time of the day?

A. Between a quarter of six and six o'clock.

Q. And who was there?

A. The girls that I mentioned and more.

Q. Do you know the names of the others?

A. Julia Melenski; Julia Wirtzman; Anna from Boundbrook, but this girl is working there now. She came to our meeting, but she is not with us now.

Q. She is at the plant?

A. Yes.

Q. She was one of the girls that was at your meeting? Anna?

A. Yes.

Q. What is her last name?

A. I don't know. She was one of the girls at that meeting, and she has gone back to work. She only came to one meeting.

Q. That was the meeting at which Mr. Posner was elected representative?

A. The meeting before he was.

TRIAL EXAMINER GATES:

Is that the meeting on August 21st?

MR. GIROFSKY:

No, we are down to the second meeting.

TRIAL EXAMINER GATES:

I was trying to figure out, you referred to a meeting where a girl was present—

A. At the second meeting she was there.

BY MR. GIROFSKY:

Q. Now, when was the next meeting?

A. About the 5th of September.

Q. Are you sure?

A. No, I am not.

Q. Do you know what day it was on?

A. No, I don't.

Q. Where was the meeting held?

A. At Harmony Hall.

Q. Who was there?

- A. The girls that I mentioned.
- Q. You don't know any others?
- A. No.
- Q. And how many were there?
- A. At the first meeting?
- Q. Did you count them?
- A. No, I didn't.
- Q. You don't know how many were there?
- A. No, I don't.
- Q. Have you paid any dues?
- A. No, I have not.
- Q. Was there another meeting?
- A. There was.
- Q. And when was that?
- A. These meetings were a week after each other,
I imagine it was about the 12th.
- Q. You are not sure?
- A. No.
- Q. Who called that meeting?
- A. We called the meeting.
- Q. Who is "we"?
- A. The girls.
- Q. Who were they?
- A. The ones I mentioned.
- Q. No others?
- A. There were others, but I can't remember who they were.
- Q. You didn't count the number of girls?
- A. No, I didn't.
- Q. At that meeting?
- A. No.
- Q. You don't know how many were there?
- A. No.
- Q. Had you ever been laid off before?

Q. If you call laid off being off for a half day, yes.

Q. Had you ever been laid off before?

A. For a half day, yes.

Q. Then it was nothing unusual for you to be laid off, was it?

A. No.

Q. The day you left you say you spoke with Mr. Ruby, you didn't speak with Mr. Fainblatt; is that right?

A. That's right.

Q. You said to Mr. Ruby in answer to his statement that there was no more work for you that that was all right with you, didn't you?

A. Yes.

Q. That is all.

Examination

BY TRIAL EXAMINER GATES:

Q. If you were laid off for a half day, or whatever it might have been, at one time, you were generally notified as to when to come back, weren't you?

A. Yes.

Q. How were you notified?

A. Well, Mr. Fainblatt would say "Come in tomorrow morning", or "Come in this afternoon".

Q. At the time you left?

A. Yes.

Q. When you worked in Plainfield did you testify as to how much money you received?

A. No, I did not.

Q. How much was it?

A. About fifteen dollars.

Q. About fifteen dollars—more or less?

A. Yes.

Q. Which?

A. It might have been a little less, fourteen dollars and some change.

Q. How much?

A. I don't remember how much exactly I got.

Q. Was it more than fourteen?

A. Yes.

Q. But less than fifteen?

A. Yes.

Q. You were an operator, weren't you?

A. Yes.

(Witness excused).

TRIAL EXAMINER GATES:

We will adjourn until nine o'clock tomorrow morning in the Freeholders' Rooms downstairs.

Any witnesses in attendance today with subpoenas will report again tomorrow; also any other witnesses who have been requested to appear today will appear tomorrow.

(Thereupon at 4:00 P. M. an adjournment was taken until February 19, 1936, at 9:00 o'clock A. M.)

Freeholders Room,
Somerset County Court House,
Somerville, New Jersey,
February 19, 1936.

The above entitled matter was resumed for hearing pursuant to adjournment taken February 18, 1936, at nine o'clock A. M.

MARY GECIK, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination

BY MR. MOSCOVITZ:

Q. What is your address?

A. One, Canal Street, Raritan, New Jersey.

Q. Were you employed by the Somerset Manufacturing Company?

A. I was.

Q. When did you go to work?

A. I went there the beginning of March, 1935.

Q. March, 1935?

A. Yes.

Q. How long did you work for them?

A. Until August 29th when I was discharged.

Q. 1935?

A. Yes, 1935.

Q. What kind of work were you doing?

A. I was an operator. I worked on slacks and shorts and other things like that.

Q. Did you work piece work?

A. Yes.

Q. And what was your piece work rate, do you remember?

A. I don't remember. There were different prices on different things. And on slacks we were getting 40¢ a dozen and then changed to 35¢.

Q. Would you be able to tell better what your income was after a week?

A. You mean after I worked a week?

Q. Yes.

A. The amount?

Q. Yes.

A. Well, I was getting about \$11 or \$12 during NRA.

MR. GIROFSKY:

I wish counsel would fix time on his question and also the number of hours per week.

A. And after the NRA I was just getting \$7 and \$8 a week.

Q. During the NRA how many hours did you work a week?

A. Forty.

Q. And after the NRA how many hours did you work a week.

A. Forty.

Q. Did you always work forty hours?

A. No.

Q. When you say forty, you mean you averaged forty hours?

A. Sometimes I only worked 35 to 40 hours a week.

Q. You worked between thirty-five and forty hours?

A. Yes.

Q. Are you working today?

A. No.

Q. Have you worked for any one else since leaving the Somerset Manufacturing Company?

A. No.

Q. Or since the alleged discharge?

A. No.

Q. Are you a member of the Union in this case?

A. I am.

Q. When did you join?

A. I joined August 21, 1935.

Q. I will show you Board's Exhibit 3 for Identification. Can you tell me what that is?

A. This is a card I signed for the Union.

Q. Is that your own Signature, and your own handwriting?

A. It is.

Q. That is the date?

A. It is.

Q. After signing this application, August 21, 1935 you continued on working?

A. I did.

Q. Before signing this application did you inquire about the Union, or was this the first time you had anything at all to do with the Union?

A. The 21st was the first time I knew about the Union. Before then I was not interested in it.

Q. Did you sign for this at a meeting?

A. Yes, I did.

Q. Is this the first meeting that we have been referring to of the Union?

A. Yes.

Q. Did you go to any other union meetings before you were discharged?

A. No, we did not have any more.

Q. You did not have any more?

A. No.

Q. Had any one of your bosses discussed union with you before the date of your discharge?

A. No.

Q. Mr. Fainblatt never spoke to you about it?

A. No.

MR. GIROFSKY:

That has been answered.

MR. MOSCOVITZ:

I wanted her to get it.

BY MR. MOSCOVITZ:

Q. The answer is no?

A. No.

Q. You say you were discharged on what date?

A. The twenty-ninth.

Q. By whom?

A. Mr. Ruby.

Q. And will you tell me what happened to you on that day?

A. I went in and was waiting. After about an hour he come by me and says to me, "I have not any more work for you. You are causing too much trouble. If you want work go to the Union. The Union will give you work."

Q. Had you been causing any trouble?

A. No.

Q. Been in any scrapes of any kind?

A. Never.

Q. Had not been put on the carpet, as it were?

A. No.

Q. Then you left. Is that it?

A. Yes.

Q. Did you return after that to work?

A. No.

Q. Did he call you after that to come back to work?

A. No.

Q. From that time on the question of your return was in the hands of Mr. Posner?

A. Yes.

MR. MOSCOVITZ:

That is all. I offer this card.

(The Union card referred was received and marked Board's Exhibit 9 for identification).

BY MR. MOSCOVITZ:

Q. Have you been here during the proceedings to date? Have you been in the court during these last two days?

A. Yes.

Q. You have heard the testimony of the witnesses who have been on the stand?

A. Yes.

Q. Were you at a meeting or any meetings in the plant before your discharge attended by Mr. Fainblatt and any other persons?

A. Yes.

Q. What other persons?

A. Well, the Mayor Hess was there, and Mr. Hawley was there, and Mr. Fainblatt introduced those two to us.

Q. Were you also in the presence of Mr. Adams, the Sheriff?

A. No.

Q. Just Mr. Hawley and the Mayor?

A. Yes.

Q. Have you heard the testimony of the witnesses in this case regarding those two gentlemen and Mr. Fainblatt?

A. Yes.

Q. Have you anything to add to the stories which they gave?

A. No. The same thing.

Q. Do you support that story?

A. Yes.

(Board's Exhibit 9 marked for identification was admitted to evidence).

Cross Examination

BY MR. GIROFSKY:

Q. When was the first time Mr. Fainblatt brought anyone to your plant?

A. August 21, 1935.

Q. What time of the day?

A. It was about four-thirty.

Q. Where were you at the time?

A. I was by my machine.

Q. Where was the meeting held in the plant?

A. On the floor of the operators. That is the middle floor.

Q. Is that the floor you were on?

A. Yes.

Q. What did Mr. Adams say?

A. Mr. who?

Q. Who was the first person to speak to you?

A. The mayor.

Q. Mr. Hess?

A. Yes.

Q. What did he say?

A. He said stick to the boss, he is your friend; that is where your bread and butter comes from.

Q. Is that all?

A. No.

Q. And all the girls in the plant at the time were present?

A. Except the floor girls.

Q. Yes, those engaged in operating were all present?

A. Yes.

Q. And you continued to work after that day?

A. Yes.

Q. And the other girls continued to work after that day?

A. Yes.

Q. Up to that time, August 21st, had you worked steadily or had you experienced any lay-off?

A. I had a couple of hours off, maybe every other day or so.

Q. And it was not unusual to you to be laid off momentarily was it?

A. No.

Q. Work during the time that you were there dropped from time to time, is that right?

A. Yes.

Q. And picked up on other occasions?

A. Yes.

Q. And it was nothing unusual for a number of girls to leave the plant for a couple of days during those low ebbs?

A. No.

Q. After you joined the Union you still continued to work, didn't you?

A. Yes.

Q. There were no complaints against you after you joined the Union, were there?

A. No.

Q. When you were employed, that was when?

A. That was in March, 1935.

Q. Who employed you?

A. Mr. Ruby.

Q. Mr. Ruby employed you?

A. Yes.

Q. He did not ask you if you belonged to the Union back in March, 1935, did he?

A. No, he did not.

Q. Now, where were you at the time you signed this card marked for Exhibit 9?

A. I was in the Hall in Raritan, New Jersey. Colfax Street. Harmony Hall.

Q. Who was there?

A. The girls.

Q. Did you count them?

A. No.

Q. You don't know the number?

A. No.

Q. Can you name them all?

A. I could not name them all. I could name some.

Q. Who else besides the girls?

A. Mr. Posner.

Q. What was done at that meeting?

A. Well, we voted for Mr. Posner to represent us.

Q. And after you did that you went back to work the next day?

A. Yes, we did.

Q. Did you speak with any of your bosses after that day?

A. No.

Q. You had no complaints to make?

A. No.

Q. Up to August 21st you had no complaints to make about your work, did you Miss Gecik?

A. No.

Q. Now, when was the next meeting that you attended?

A. August 28th.

Q. And where was that held?

A. The same place.

Q. How many were there if you know?

A. About twenty-five to thirty-five.

Q. Did you count them?

A. No.

Q. You don't know?

A. Well—

Q. I asked you if you knew how many were there?

A. No.

Q. What was done at that meeting?

A. Well, we were telling him about our conditions and everything like that.

Q. Told who?

A. Mr. Posner.

Q. Up to that time you had not told your bosses anything about conditions, had you?

A. Because he would not listen to us.

Q. Just a moment. You did not?

A. He would not listen any way.

Q. Answer the question, please.

A. No, I did not.

Q. We will get along very well if you just answer the questions. And when was that meeting held?

A. The 28th of August.

Q. That was the last day you were working?

A. Yes.

Q. You did not go out on strike did you?

A. No.

Q. You were not an employee were you?

A. I was but not at that time.

Q. The time of the strike?

A. No.

Q. You were not one of those who went out on strike?

A. No.

Q. Now, have you worked since August 28th?

A. No.

Q. Have you sought employment?

A. No.

Q. You did not seek employment between the 21st and the 18th of September?

A. No.

Q. What were you doing between those dates?

A. Stayed home.

Q. Working about the house?

A. At home.

Q. At home?

A. At home, yes.

Q. You are a married woman?

A. No.

Q. Who do you live with?

A. My mother.

Q. You helped her?

A. Yes, I did.

Q. Are there other members in the family?

A. There certainly are.

Q. How many?

A. Seven of us.

Q. All grown up?

A. No.

Q. How many of them grown up working?

A. One.

Q. You were helping about the house?

A. Yes.

Q. Now, from September 18th on did you seek employment anywhere?

A. I did not.

Q. What are you doing today?

A. Nothing just now.

Q. Not interested in getting employment?

A. Yes, I am.

Q. Then why did not you go after it?

MR. MOSCOVITZ:

I object to the question. The answer to that question is clear. The person is alleged to have been discharged because of union activities.

TRIAL EXAMINER GATES:

I think she may answer the question.

* * * The stenographer read back the question, "Then why did you not go after it?" * * *

BY THE WITNESS:

A. Because I was aiming to go back there.

Q. You told us that you were discharged.

A. I was.

Q. Did you want to go back and work?

A. As soon as the Union got in there.

Q. You would not go back under any other circumstance?

A. No.

Q. Yet you worked there without a complaint from the beginning of your employment?

A. Yes, I did.

Q. About a year.

A. No, it was not quite a year.

Q. Have you asked Mr. Posner to get you work in any union shop?

A. No.

Q. Why haven't you?

A. Because you have to work hard and you can't make nothing if it is not a union shop.

Q. That was not the question. Did you ask Mr. Posner to get you a job in a union shop since August 21st?

A. No, I didn't.

Q. Why didn't you?

MR. MOSCOVITZ:

I say again that Mr. Posner is not an employment agency. He is a representative of these girls.

TRIAL EXAMINER GATES:

The witness may answer.

A. Because I did not.

Q. Is that the best answer?

A. Yes.

MR. GIROFSKY:

That is all.

Redirect Examination

BY MR. MOSCOVITZ:

Q. You stated in answer to Mr. Girofsky's question at various times during your employment you had a couple of hours off daily?

A. Yes.

Q. Had you ever been completely laid off before?

A. No.

Q. This was the first time?

A. Yes.

Q. Had you ever had your boss speak to you in the same way that he spoke to you that day?

A. No.

Q. You also testified that Ruby did not ask you if you belonged to the Union in March, 1935. That is right?

A. No.

Q. There was no Union?

A. No.

MR. GIROFSKY:

Mr. Moscovitz has gone all over this.

MR. MOSCOVITZ:

These questions are raised.

TRIAL EXAMINER GATES:

You may proceed.

BY MR. MOSCOVITZ:

Q. Mr. Girofsky asked you if you know how many people were at the Union meeting on August 21st, 1935. You don't know how many were there?

A. I said between twenty-five to thirty-five.

Q. That is an approximation?

A. Yes.

Q. These people you are approximating about the people you had seen in and about the plant working?

A. Yes.

Q. You have also testified that you never spoke personally to Mr. Posner about your condition?

A. Yes.

Q. Did you want the Union to represent you for that purpose?

A. Yes.

Q. When you say you were not an employee the day of the strike meaning that you had been discharged just previously?

A. Yes.

Recross Examination

BY MR. GIROFSKY:

Q. About a month previous to the strike you were out of the employ?

A. No, not quite.

Q. Have you ever paid any dues to the Union?

A. No, never.

Q. How much did you receive under the NRA?

A. Twelve or thirteen dollars. Between that.

Q. Any less?

A. Once in awhile.

Q. You were paid on a piece work basis were you not?

A. Yes, I was.

Q. During the NRA and after the NRA?

A. Yes.

Q. And you received compensation for whatever you produced?

A. Yes.

Q. And you always received every bit of compensation that was due you, didn't you, while you were there?

A. Yes.

Q. How many girls were working at the plant on August 21st?

A. About 60 or 65.

Q. Sixty or sixty-five?

A. Yes.

Q. Preceding August 21st—one week preceding August 21st how many were working there?

A. When do you mean?

Q. One week before?

A. It was from fifty to forty.

Q. One week after August 21st how many were working there?

A. I don't know.

Q. Why don't you?

A. Because I did not count them.

Q. Did you count them before?

A. No.

Q. Then you don't know at all, do you?

A. No.

Q. Why didn't you say you didn't know?

BY TRIAL EXAMINER GATES:

Q. Just a minute. I believe at the beginning of your testimony you told us about how much you were making the last few weeks that you worked. I wonder if you mind repeating that again?

A. I made from \$6 to \$9. I will say about \$9.

BY MR. GIROFSKY:

Q. Did you ever make over \$9?

A. No, not after the NRA.

Q. Never?

A. No.

Q. How many hours did you work the last week?

A. I worked about—

Q. Exactly now. You punched your time card, didn't you?

A. Not all the time.

Q. You know and saw your time card each day you worked there didn't you?

A. Yes, I did.

Q. The day that you didn't punch your time clock you saw it the following day didn't you?

A. Yes.

Q. What number of hours did you work the last week you were there?

A. About twenty-four.

Q. Yes. And the week before that, how many hours did you work?

A. I don't know.

Q. You don't know?

A. No.

Q. The week before that?

A. I don't remember.

Q. You received that amount of money which was due you?

A. Yes, I did.

Q. Not less?

A. No.

(Witness dismissed.)

THERESA YEMMA being called as a witness by the National Labor Relations Board upon being duly sworn, testified as follows:

Direct Examination

BY MR. MOSCOVITZ:

Q. Your address.

A. Twenty-two New Street, Somerville, New Jersey.

Q. Were you employed by the Somerset Manufacturing Company?

A. I was.

Q. When?

A. I went to work there in April, 1935.

Q. How long did you work?

A. I worked until August 29, 1935.

Q. Is that the last day you worked?

A. Yes.

Q. Did you work continuously for them up until that date?

A. I did.

Q. Was that the day on which you were alleged to have been discharged?

A. Yes.

MR. GIROFSKY:

I object. Is there an allegation for Yemma?

I ask that be stricken from the record.

TRIAL EXAMINER GATES:

Please strike it.

BY MR. MOSCOVITZ:

Q. You worked until when?

A. August 29th.

Q. Were you a member of the Union?

A. Yes.

Q. When did you join the Union?

A. I joined the Union on August 21st at our first meeting.

Q. I show you Board Exhibit No. 10 marked for identification. Is that your application?

A. Yes.

Q. Your signature?

A. Yes.

MR. MOSCOVITZ:

I offer it.

(Mr. Girofsky examined Ex. 10.)

TRIAL EXAMINER GATES:

Admitted.

BY MR. MOSCOVITZ:

Q. What kind of work did you do for the Company?

A. I was an operator.

Q. Did you work piece work or hourly rate, or weekly salary?

A. I did both.

Q. Did both what?

A. I did both. I worked by piece work and by the hour. When we were very busy I worked piece work. I did two or three different things and then when he needed more girls on the floor he would take me off my machine and put me on the floor.

Q. Then you would work hourly rate?

A. Yes.

Q. Did you work for the Company during NRA?

A. Yes.

Q. Did you work for piece work then or on a minimum wage?

A. Piece work I think.

Q. What were you getting?

A. I was making between \$9 and \$11.

Q. Do you remember how many hours a week you worked?

A. During the NRA I was working forty hours a week.

Q. You got between \$9 and \$11 a week?

A. Yes.

Q. Were there any change in the condition of your employment as far as hours and wages after the NRA?

A. The prices were cut after the NRA.

Q. Just once?

A. He kept changing me off and on. I was not on the machine two or three days a week. I would be on the floor and I would do different operations.

Q. So you had no way of calculating your income, your salary?

A. No.

Q. Would you know before the end of the week how much you were going to get?

A. If I asked the bookkeeper.

Q. Otherwise you could not?

A. I could if I stopped to figure out my hours.

Q. And your changes?

A. Yes.

Q. How many hours did you work, a certain number of hours after the NRA each week?

A. We were supposed to work forty hours. But sometimes I would go home at half past four or a quarter to five, or sometimes fifteen minutes before.

Q. Depending upon whether or not you had finished up the day's work?

A. Yes.

Q. Can you tell me how many hours a week you averaged after the NRA?

A. The weeks varied. Sometimes I worked thirty and thirty-five hours a week; sometimes I worked thirty-six hours.

Q. Did you ever work less than thirty hours a week?

A. I think I worked only two days once.

Q. Once you worked two days in a week?

A. Yes.

Q. After that would you say the next period of work was a thirty hour a week?

A. I don't remember.

Q. What is the greatest number of hours you worked a week after the NRA, do you remember?

A. I believe it was forty hours.

Q. That is the most?

A. Yes.

Q. One time you worked two hours a week?

A. No, never two hours.

Q. Two days?

A. Yes, two days.

Q. What was the customary number of hours you worked after the NRA, did you say?

MR. GIROFSKY:

I object.

TRIAL EXAMINER GATES:

I think it is a proper question.

Q. You joined the Union August 21st?

A. Yes.

Q. Before joining the Union had you discussed union with any one of your bosses?

A. No, I never did.

Q. Never after joining the union did you or did any of your bosses discuss it with you?

A. No, but I heard Ruby discuss it in front of me.

MR. GIROFSKY:

I object to any assertion or statements of conversations to any one besides the respondent. It is purely hearsay, not binding upon the respondent.

TRIAL EXAMINER GATES:

Objection is overruled. You may inquire further into that, Mr. Moscovitz.

Q. You say you heard Ruby discuss the Union?

A. Yes.

Q. In your presence?

A. Yes.

Q. With whom?

A. With a friend of mine.

Q. Who was that?

A. Mrs. Pascal.

Q. And was that in your presence?

A. Yes.

Q. Did you hear the conversation?

A. Yes.

Q. What was said?

A. He accused her—

MR. GIROFSKY:

I object to this conversation. It is not binding on respondent. It is hearsay.

TRIAL EXAMINER GATES:

I understand the objection includes this whole line.

BY THE WITNESS:

A. He accused her of organizing a union in the

shop. She refused to acknowledge organizing it. And he told her that she should go home. It was noontime at twelve o'clock. He told her to go home until further notice and he never sent for her again.

Q. Do you remember about when that was?

A. That was, I believe, three or four days before our first Union meeting.

Q. Three or four days before your first Union meeting. Were you discharged before the first Union meeting or afterwards?

A. After the first Union meeting.

Q. When was the date of the first Union meeting?

A. August 21st.

Q. Did you attend the first Union meeting?

A. Yes, I did.

Q. It was then you signed up for this?

A. —

Q. What happened after the first Union meeting, as far as you are concerned?

A. I went to work. But Ruby kept putting me off. He kept saying, wait and wait. He would let me sit at my machine and wait. He had lots of heavy work I was experienced at. Because I had worked at another shop doing that. I told him that and he kept saying wait. I would get tired of sitting and he would keep telling me wait. I would go home early on those days he told me to wait. On August 29th, the day after the second meeting, I went to get my pay. I had not worked for two or three days. I went in to get my pay and Ruby told me he did not have any more work for me. He said I was causing too much trouble.

Q. Did you ask him to explain that?

A. No, I did not.

Q. Had you been causing any trouble?

A. No.

Q. Had you been in any trouble at the plant?

A. No.

Q. Had you been disciplined by any one?

A. No.

Q. Hadn't you been called up and bawled out?

A. No.

Q. That day after he spoke to you you went?

A. Yes.

Q. Have you worked any place since?

A. Yes.

Q. Where?

A. I worked in Trieber's.

Q. How long?

A. From—I don't know—a couple of weeks in September until Christmas, December.

Q. Did you work all of October?

A. Yes.

Q. All of November?

A. Yes.

Q. Up until Christmas?

A. I think it was until Christmas and two or three days after Christmas.

Q. All of December?

A. Yes.

Q. Do you remember how much you made?

MR. GIROFSKY:

I object. It is not binding on the respondent; has no materiality or relevancy.

TRIAL EXAMINER GATES:

I don't know what it is.

MR. GIROFSKY:

What relevancy has her wages in the Treiber Factory to this issue?

TRIAL EXAMINER GATES:

Let's see where it leads.

Q. Can you remember what you received in Treiber's?

MR. GIROFSKY:

I take exception.

A. I was making up to fifteen dollars a week.

Q. How much did you make during the whole time that you were there?

A. It would be on an average of thirteen dollars.

Q. Did you work for any one else?

A. M. H. Fishman, the department store in Somerville.

Q. How long?

A. I worked there an occasional Saturday.

Q. How many Saturdays all told?

A. I worked, I believe all the Saturdays in October, November and December.

Q. All the Saturdays in October, November and December?

A. Yes.

Q. And there you were doing entirely different work from Mr. Fainblatt's?

A. No. That was up in the department store.

Q. You were doing different work than when you worked for Mr. Fainblatt?

A. Yes, of course.

Q. When you worked for Mr. Treiber were you doing the same kind of work?

A. I was operating a machine.

Q. When you worked in the department store do you remember how much you got?

A. It depended upon the hours I worked. If I worked thirty hours I received twenty-one cents an hour.

Q. Did you always work ten hours?

A. Mostly on Saturdays.

Cross Examination

BY MR. GIROFSKY:

Q. What time did you go to work at Fishman's in the morning?

A. I did not go in the morning. I went at twelve o'clock.

Q. When did you leave?

A. At ten o'clock.

Q. How much time off for your evening meal?

A. One hour.

Q. How much did you receive from Fishman?

A. Well, if I worked nine hours I got \$1.89. If I worked twelve hours I got \$2.52.

Q. For ten hours?

A. Yes.

Q. Now, when you went to work for the Somerset, you had never experienced this work before?

You were not an experienced operator?

A. Yes, I was.

Q. Where did you work before you went into the Somerset.

A. In Treiber's.

Q. How long?

A. I worked there about six months.

Q. Why did you leave Treiber's?

A. Because he did not have enough work to keep all the girls going.

Q. He told you he would have to let you go?

A. Yes.

Q. That was not unusual then for you to hear the boss say there is nothing more to do?

A. Yes. No.

Q. Yes or no?

A. No.

Q. How many hours a day did you work at the Treiber plant?

A. Seven and a quarter, or seven and a half hours. I don't remember.

Q. And how many days a week did you work there?

A. Five days a week.

Q. And you were paid there according to the number of garments you produced, is that right?

A. No.

Q. You were not?

A. No.

Q. What were you doing there?

A. I was working on the lumber jackets.

Q. That is paid on the hourly basis?

A. Yes, that is.

Q. You were not an operator there?

A. Yes, I was.

Q. Now, the Treiber plant manufactures a different garment than the Somerset, is that so?

A. In one way.

Q. Yes, and the Somerset plan garments were all new to you?

A. Half of it.

Q. Half of it?

A. —

Q. And you had to learn on those new articles, didn't you?

A. Well, yes.

Q. Yes, is that right?

A. Yes.

Q. And you were paid as a learner on those new articles weren't you?

A. I was not told that I was paid as a learner.

Q. But you were a learner. Yes or no?

A. No.

Q. Now, when you were working at the Treiber plant after you left the Somerset plant did you consider yourself an employee of the Treiber plant?

A. Certainly.

Q. At the same time, did you consider yourself an employee of the Somerset plant?

MR. MOSCOVITZ:

I don't think it makes any difference what she considered. Facts speak for themselves as far as the relationship is concerned.

TRIAL EXAMINER GATES:

It makes no difference. You may proceed.

Q. Did you consider yourself an employee of the Somerset plant at the same time?

A. Yes.

Q. An employee of both plants at the same time?

A. Yes.

Q. Why?

A. Because Treiber's did not have enough work to keep me a whole year and he had told me that at the beginning of the year.

Q. Did you ask him when you went there to work?

A. I knew from previous experience.

Q. At Treiber's?

A. Yes.

Q. Did you ask Mr. Fainblatt when you went to work there if he had enough work to keep you busy a whole year?

A. I asked Ruby.

Q. You did not ask Mr. Fainblatt?

A. No, because Ruby was the foreman.

Q. You were not promised steady employment for a whole year?

A. Ruby told me they worked a whole year straight.

Q. Every day in the week?

A. Yes.

Q. Did you know any girls that worked there before?

A. Yes.

Q. You knew that some of them were off a few days at certain weeks?

A. At that time they were working steady.

Q. Sometimes during your stay there work dropped off, didn't it?

A. It dropped off because he wanted it to.

Q. Did work drop off?

A. Yes.

Q. And when was the first meeting of the Union that you attended?

A. August twenty-first.

Q. Who invited you?

A. The girls.

Q. What girls? Name them.

A. The girls of Fainblatt's shop. There were many. I could not name them.

Q. How many?

A. Who invited me?

Q. Yes.

A. I think there were two girls who asked me to go.

Q. You can't name them?

A. Yes, I can name them. Ethel Rice and Lorraine Heitz.

Q. Where was that meeting held?

A. In Harmony Hall, Raritan, New Jersey.

Q. Who was there?

A. The majority of the girls.

Q. Who was there?

A. The girls and Mr. Posner.

Q. Did you count them?

A. No, I did not.

Q. Name them.

A. All of them?

Q. Name the girls.

A. There was Ethel Rice, Fay Katz, Lorraine Heitz, myself, there was Marie Morano, and Nan Santoro; there was Sophia. I don't know a lot of their last names. I will give you ~~first names~~. Sophia, Carmela, Ida; there was two girls by the name of Julia, and there were two girls by the name of Josephine, and one by the name—

Q. What was their last names?

A. I don't know.

Q. You mingled with those girls for several months?

A. Yes.

MR. MOSCOVITZ:

Just a moment. I respectfully request that Mr. Girofsky stand a little way from the witness and not intimidate her.

MR. GIROFSKY:

If you will excuse all the girls in this room I will.

MR. MOSCOVITZ:

I made a request and I think Mr. Girofsky should accede to it. I don't think it is fair.

TRIAL EXAMINER GATES:

You may proceed.

MR. GIROFSKY:

If this witness is telling the truth there is no need for her to be worried or nervous.

MR. MOSCOVITZ:

She is telling the truth. How can she stand up under that sort of coercion?

MR. GIROFSKY:

You know I am not cruel.

BY MR. GIROFSKY:

Q. You did not count the number of girls?

A. No.

Q. When was the next meeting?

A. One week later. The week of the twenty-eighth.

Q. You were not employed at that time?

A. I was.

Q. When you joined the Union did you tell your bosses that you joined?

A. No, he knew who had joined.

Q. I did not ask you that. Answer my question.

A. No.

Q. When you first sought employment there no one asked you if you belonged to the Union did they?

A. No.

Q. You were satisfied with the work there—to work there when you went for employment?

A. I had to.

Q. No one kept you from going elsewhere for employment did they?

A. No, but I had tried before that.

Q. Yes, or no.

A. No.

Q. You had trouble before that?

A. I had tried before that and could not get employment anywhere else.

Q. Mr. Fainblatt did you a favor in giving you employment?

A. I did him a favor.

Q. You consider yourself so good that you are doing an employer a favor by working for him? Yes or no?

A. No.

MR. MOSCOVITZ:

I must ask again that he not browbeat the witness, because the witness is now obviously half broken down and crying as the result of this sort of questioning and I don't think it should be permitted.

TRIAL EXAMINER GATES:

I am inclined to agree.

MR. MOSCOVITZ:

It is a not a question of the employer doing the employee a favor, or the employee doing the employer a favor.

MR. GIROFSKY:

I wish the Act would take care of the employer as it takes care of the Union.

BY MR. GIROFSKY:

Q. And did you count the number of girls at the next meeting you attended?

A. No, I did not.

Q. You don't know how many were there, do you?

A. There were more than the last time.

Q. If you did not count them you can't know how many were there?

A. No.

Q. Have you gone back to the Treiber plant for employment since you were last there?

A. No, I called him up.

Q. There was no work?

A. No.

Q. That is a union shop?

A. Yes.

Q. Is the plant closed?

A. No.

Q. How many girls working there?

A. There are about twenty-five working there now.

Q. When he is operating in the busy season how many are working there?

A. About fifty to sixty girls.

Q. That is the most?

A. I believe so.

Redirect Examination

BY MR. MOSCOVITZ:

Q. Do you know whether or not Mr. Fainblatt had any spies at your union meeting?

MR. GIROFSKY:

I object to this question. I think it is grossly unfair, it is immaterial and it is hearsay.

TRIAL EXAMINER GATES:

It certainly is not immaterial. Objection overruled.

MR. GIROFSKY:

Mr. Fainblatt is Mr. Moscovitz' own witness in this proceeding so far. Unless Mr. Moscovitz wishes to neutralize Mr. Fainblatt's testimony.

TRIAL EXAMINER GATES:

Please proceed.

MR. GIROFSKY:

I take an exception.

A. There was one girl there. Her first name was Wanda. Quite a big girl with dark curly hair. I never knew her first name. She worked on a double needle machine. She came to the second meeting. Now she is working in the shop but never came to another. She even signed one of our cards.

MR. GIROFSKY:

The question is being answered. I wish this witness would be permitted to proceed.

TRIAL EXAMINER GATES:

Proceed.

BY THE WITNESS:

A. What else do you want me to say.

Q. Is that the only answer?

TRIAL EXAMINER GATES:

Q. Do you know whether there was any one there?

A. Yes, one girl.

Q. Do you know whether or not she was there for the purpose of reporting back to Mr. Fainblatt?

A. I think so.

~~Q.~~ Do you know.

A. No, I don't know.

MR. GIROFSKY:

I ask that this witness be instructed to give truthful and definite answers and not conclusions or presumptions or inferences or thought.

TRIAL EXAMINER GATES:

It is being given.

MR. GIROFSKY:

It is unfair to build the record up with this tripe, so to speak.

MR. MOSCOVITZ:

Who are you referring to, the witness or the testimony?

MR. GIROFSKY:

Both the questions of the Counsel for the Board and the witness's answers.

MR. MOSCOVITZ:

Thank you, Mr. Girofsky.

BY MR. MOSCOVITZ:

Q. Can you give me any other information you know of yourself on that point?

A. No.

Q. That is all you know?

A. No—yes.

Q. You simply surmised it on the basis of what she did and what she is doing, is that right?

A. Yes.

Recross Examination

BY MR. GIROFSKY:

Q. That girl joined the Union didn't she by signing a card?

A. I don't know.

Q. She signed a card, didn't she?

A. Yes.

Q. You did not pay any dues to the Union did you?

A. No.

Q. She didn't pay any dues to the Union?

A. No.

Q. That girl went back to work, didn't she?

A. Yes.

Q. She is still working there today?

A. I think so.

Q. —

A. Yes.

TRIAL EXAMINER GATES:

Q. Did she go out on strike?

A. No.

TRIAL EXAMINER GATES:

Let us have a five minutes' recess.

(Thereupon, at 10:05 a recess was taken until 10:10 a.m.)

MR. MOSCOVITZ:

I would like to recall Mr. Fainblatt.

BENJAMIN FAINBLATT was recalled to the stand.

Direct Examination

BY MR. MOSCOVITZ:

Q. Mr. Fainblatt, how many people were working at your plant in production, that is actually in production, not counting boys who were engaged in shipping, or general work on the day of the strike?

A. I could not tell you. I have a list here. The list will tell you.

MR. GIROFSKY:

This question has been gone into.

TRIAL EXAMINER GATES:

I think that is covered in the record. In order to be certain I have no objection if you inquire into it briefly.

Q. Do you remember how many people you testified had been working at the plant on the day of the strike?

A. We have the list here.

Q. During this period from August twenty-first to September eighteenth?

A. I have the slightest recollection that we just happened to need a few more girls, two or three girls more. I have a slight recollection that one or two days some of my former girls were laid off. There was not work enough for some girls. They have not reported to work. And while they have not reported to work other girls happened to come along and ask for work, and I think I put them to work. Those girls went out on strike, the entire branch.

Q. You don't know that?

A. Yes.

Q. What girls was that?

A. The names? The names I don't know.

Q. Would your record show the number you had to certain dates working for you?

A. My records shows here. (Referring to Time Book)

Q. Take August sixteenth. From August sixteenth to August twenty-ninth.

A. It shows the girls who are working.

Q. How many.

A. Some worked a day—

MR. GIROFSKY:

I think you ought to explain the record.

BY THE WITNESS:

A. While some girls in that period between August sixteenth and August twenty-third might have worked, or rather let us say that worked one—

BY MR. MOSCOVITZ:

Q. Some of these girls may have worked one hour, some may not have worked three days, and some may not have worked at all?

A. They might have worked some including that week. It shows that this girl made twelve hours in that week, where the next day she has not made nothing. Consequently we have to go and check up exactly and tell you what each and every day.

Q. I want to give you every benefit of your understanding. I this correct—I will ask you this question—that your book showing that may indicate that some of these girls on the payroll will have worked a few hours one day, maybe not at all the next day, maybe a couple of days during the week, maybe five days, depending upon the amount of work in that week..

A. Exactly. If I had work for them.

Q. We are straight on that. Now I want to know this: Taking that into consideration, how many girls were on your payroll for that period?

A. That week. That will show you. The payroll will show you how many that week.

(The Witness counted the names on his book.)
Sixty-one..

Q. That is sixty-one. So the payroll book will show on August, the week of August sixteenth, being the week of August sixteenth,—that means to August twenty-third, 1935—

A. Up to that.

Q. Up to August twenty-third. Now, out of that number, during the period, which of these girls worked in your office?

A. None of those girls worked in my office.

Q. How many girls do you have in your office?

A. One..

Q. What is her name?

A. Her name is Anna.

Q. Anna what?

A. I will look. Anna.

Q. Was she working for you—wasn't Jean Saunders the bookkeeper then?

A. Oh, yes.

Q. August sixteenth?

A. Jean was.

Q. She was your bookkeeper?

A. Yes.

Q. Which of these people were doing work other than manufacturing?

A. None of those people don't.

Q. They are all production?

A. All for the production of the garment, which belonged to the production of the garment.

Q. Were any of these people doing shipping?

A. No.

Q. Who did the shipping. How about Eddy?

A. Eddy all round man.

Q. Are they in this list? Eddy and Andy?

A. Certainly they are. Eddy, Tony, Ruth, Jimmy; here is Charley Grill.

Q. What does Charley Grill do?

A. He is a cutter.

Q. And Jimmy?

A. Jimmy is a general man. He is not there any more.

Q. He is not an operator?

A. A general man.

Q. And Ruby?

A. Ruby is the floorman.

Q. Jean?

A. Bookkeeper.

Q. Al?

A. Al does general work.

Q. Eddy?

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A. The same thing. Tony the same thing. All general work.

Q. Mrs. Smith?

A. She was a finisher.

TRIAL EXAMINER GATES:

Q. On counting those sixty-one, you didn't count any of those?

A. No, I did not. You want me to count them?
BY MR. MOSCOVITZ:

Q. You are including Ruby and Mrs. Ruth who was a floorlady?

A. The examiner is asking for that. I did not include them in the sixty-one.

TRIAL EXAMINER GATES:

Q. How many of those are actually on production? If he is a cutter he would be.

A. He is a production man.

TRIAL EXAMINER GATES:

Q. Would Joe be?

A. He is a cutter. Yes.

TRIAL EXAMINER GATES:

Q. Those are the only two cutters, except Mrs. Smith?

A. She is a finisher. She does a class of work that has to be sewed by hand. We just call her in occasionally to work.

TRIAL EXAMINER GATES:

Q. There are about four all round people there?

A. Yes. They all belong to production.

MR. MOSCOVITZ:

Is that an afterthought? That has never been alleged before.

TRIAL EXAMINER GATES:

Nobody is alleging anything. I am merely asking some questions here.

TRIAL EXAMINER GATES:

Q. Ruth is Mrs. Evans. Is that right?

A. Yes.

Q. She is the floorlady?

A. Yes.

Q. Ruby is the foreman?

A. Yes.

Q. All the rest work on production?

A. Yes.

BY MR. MOSCOVITZ:

Q. Al does not work on production?

A. Al works on the floor.

Q. He is a general man. Is he a cutter?

A. No.

Q. Is he an operator?

A. No.

Q. Is he a trimmer?

A. No. He is doing anything that is necessary in the place, carrying from one to another. Cleaning the floor, and so forth. What we call general work.

Q. But he is not engaged in the production of the article itself?

MR. GIROFSKY:

The answer speaks for itself.

MR. MOSCOVITZ:

If you want to cross examine this witness you may. I want to get this straight.

MR. GIROFSKY:

I wish you would define production.

MR. MOSCOVITZ:

Production I think is pretty clear. I don't suppose carrying around a basket would be production.

MR. GIROFSKY:

I think it is a phase of it.

BY MR. MOSCOVITZ:

Q. Al you say is a general man. And Eddy?

A. Yes, and Tony is a general man, and Jimmy is a general man.

Q. And Mrs. Smith is a floorlady?

A. Mrs. Smith is a finisher.

Q. Is Mrs. Smith the only finisher in the plant?

A. She is the only finisher.

Q. And you use her when you need her?

A. Yes.

Q. But you have no other finisher?

A. No.

Q. The finisher's work is entirely different to the work of any of the other girls?

A. It is a product we need to produce the garments.

Q. But it is an entirely different job?

A. No, it is not. She sews on buttons. She sews on snaps. By hand. Hooks and eyes.

Q. Is the wage scale the same as the others?

A. She does piece work. The price made on the production of that.

TRIAL EXAMINER GATES:

Q. Do you have any other girls? Look through the list. Have you any other girls that do the same work that Mrs. Smith does?

A. I will tell you we do and we don't. For instance, this Evaline Price is a floor girl. When we have too much work for Mrs. Smith she will go back on this here production and will sew also snaps and get paid as a piece worker.

BY MR. MOSCOVITZ:

Q. Mr. Fainblatt, you name sixty-one people and

then below that there are a number of others. Why do you differentiate?

A. I really don't know. This is the way the book-keeper happened to enter it. But at the same time they are an employee. I have to call them an employee. She shows they have been paid.

Q. Your next week starts August thirtieth?

A. You can see.

Q. And it goes to September seventh.

A. You can see it here.

TRIAL EXAMINER GATES:

Q. Is that for the two weeks, August sixteenth?

A. August sixteenth to the twenty-third.

TRIAL EXAMINER GATES:

Q. Should you not have one starting the twenty-third?

A. Monday is the twenty-third.

MR. MOSCOVITZ:

This is the twenty-third. It goes over to September seventh.

TRIAL EXAMINER GATES:

Q. Do these figures over here cover the week of August twenty-third here for the same people as are over on that side?

A. No. I can explain it all. Here on this side is Rosa Martini, here has paid three hours one day on Monday, and eleven hours total time. On Thursday she made a day. It made the eleven hours. She earned \$2.89 for eleven hours. Then the following week, which is August twenty-third, you see the number goes right across. She made three days. That makes thirty-four. She made that week twenty-nine hours which she earned in those twenty-nine hours, \$8.64. For instance, here was Margaret Alden, where she worked on the week of August six-

teenth, but she has not worked on the week of August twenty-third.

BY MR. MOSCOVITZ:

Q. I think that is clear now from your description. How many people were working during that week?

A. Which week?

TRIAL EXAMINER GATES:

He has already testified.

Q. He has testified about the week of August twenty-third. Now I want to know the following week.

A. We have got it here. You see the names go straight across.

Q. I want to know from August 23rd up to the next week. How do you get your names? Does the book go backwards?

A. (Counting the names) Forty-seven worked the week of August 23rd.

TRIAL EXAMINER GATES:

Q. I think you dropped ten there when you turned a page. I thought it was fifty-five.

A. (Referring again to the book) Fifty-eight.

BY MR. MOSCOVITZ:

Q. That will show fifty-eight up to August twenty-third?

A. Yes, besides those.

Q. Who was dropped?

A. I could not tell you.

TRIAL EXAMINER GATES:

Q. Mrs. Smith and Charlie Grill are not there.

A. Charlie Grill is not here.

BY MR. MOSCOVITZ:

Q. What is the total number?

A. Eight and fifty-eight.

TRIAL EXAMINER GATES:

Q. That eight would include one cutter, five general men, Ruby and Mrs. Evans?

A. Ruby and Mrs. Evans is two. The bookkeeper is three. Cutter is four. There were not five general there. There is only one cutter in the place.

TRIAL EXAMINER GATES:

Q. You would also include Mrs. Evans and Ruby?

A. Yes, Mrs. Evans, Ruby and the bookkeeper.
BY MR. MOSCOVITZ:

Q. Mrs. Evans, Ruby, the bookkeeper and the cutter?

A. Yes.

Q. Take the next week. That would be August thirtieth.

A. (Referring to the book) Fifty and eight besides.

Q. That eight includes the same people that you referred to before as a general man, cutter, Ruby, floorlady?

A. Yes, everything.

Q. The following week. The week of September seventh.

A. (Referring to the book) Fifty-two and nine in addition.

Q. The nine additional are who?

A. I see I have the name of Larry.

Q. There was an additional girl came in during that week?

A. Yes.

Q. In any event, that is the figure?

A. Yes.

Q. Now, the following week.

TRIAL EXAMINER GATES:

Q. You don't know who Larry is, do you?

A. No, I don't. We took him in for a couple of days. But he has got to appear on the pay roll. We may run short of certain help for certain productions. We take in somebody for a day or two. Not what we call a permanent employee, merely what we call for the time being. But at the same time it must appear in our pay roll. This is why you may find more or less, and less and more.

Q. But that would show on the pay roll?

A. Pardon me. Certainly we have to call them an employee. He is given pay for services. This employee is not employed as a permanent employee and consequently he is not replacing anybody of my permanent employees. That is what I want to emphasize, Mr. Examiner.

BY MR. MOSCOVITZ:

Q. What is the following week, September sixth to fourteenth?

A. (Examining the book) Well, let's see.

BY MR. MOSCOVITZ:

Q. Before you go to the next figure, which are new employees?

A. I can't tell. I can only tell by comparing the faces to the records. The names I don't know.

Q. In addition to that you have Tony and Jimmy, Al, Ruby, Ruth and Eddy. I want to get it straight once for all. Adaline Potter should be included in the figure.

A. Here we lost one.

Q. It would be fifty-four. In addition to that you also have Tony who is a general man, Ruth, and Jimmy who is a general man, and Al who is a general man?

A. Yes.

Q. What did Jimmy do?

A. Jimmy was cleaning the floor, putting on belts on the machines, cleaning the machines. That was Jimmy. He was not a worker.

Q. What did he do, work on buttons?

A. He put on eyelets.

Q. What else?

A. Different things. All general work in the factory.

Q. Did he work on the material itself?

A. Yes. You can't put on eyelets unless you put it on the material.

Q. Now Al, he did the same sort of thing?

A. On the same work.

Q. Ruby is the foreman, and Ruth the floor-lady. Ann is the bookkeeper. Eddy?

A. Eddy is also a general boy. Eddy was the helper downstairs.

Q. Was he working during that week?

A. He got paid. Don't you see. A couple of days and I paid \$4.

Q. Why isn't there total time for Ann?

A. They never punch a clock. When they come for general work they never punch no clocks. There is no time on it.

TRIAL EXAMINER GATES:

Q. Let's do one more week. September twenty-first.

A. (Examining the book) Forty-eight, plus eight. That is fifty-six.

BY MR. MOSCOVITZ:

Q. Of that eight that Mr. Fainblatt has just referred to we have again Tony, Jimmy, Al, Ruby,

Ruth and Eddy. Is that right? Ruby being the foreman, Ruth being the forelady. Is that right?

A. Yes.

Q. Mr. Fainblatt, during the periods that you have just been going over in your book, you say that there were some new people taken on to do some work?

A. I believe so. To my best recollection.

Q. And that their names would appear in your pay roll book?

A. Yes.

Q. Mr. Examiner, I would like to be sure that we have a complete record on this thing and be able to make the proper comparison, read into the record the names of those on the payroll during the period specified so that we might then have a basis for comparing those in the union during the same period and thus determine the percentage, otherwise I am afraid the record on that question will be ambiguous.
TRIAL EXAMINER GATES:

Q. How much do you want to read into the record, Mr. Moscovitz?

MR. MOSCOVITZ:

I would say the names properly explained should be in the record from August fourteenth through September twenty-first.

TRIAL EXAMINER GATES:

August sixteenth.

MR. MOSCOVITZ:

August fourteenth or sixteenth through September twenty-first. We have the payroll dates start.

TRIAL EXAMINER GATES:

That is the payroll period ending then.

MR. HALPERIN:

I don't know why Mr. Moscovitz wants to start August fourteenth. It seems to me the proper time to start would be the time the strikers were out on strike.

MR. MOSCOVITZ:

In answer to Mr. Halperin's statement, why you would want from September twenty-first on, it might become necessary to make the determination of a date prior to September eighteenth for the purpose of majority representation. We have the question did Mr. Fainblatt recognize a representative of the majority of the employees prior to the date fixed by the strike. It is conceivable that is it.

MR. HALPERIN:

I would like to amend my objection and make it even stronger to this effect, that the date to be read in the record, I think the stenographer can give me the exact date when the strikers voted upon their choice of representatives,—it should be that date. The comparison should be made.

MR. MOSCOVITZ:

We are saying the same thing.

MR. HALPERIN:

Except you are going back to August fourteenth.

MR. MOSCOVITZ:

Where would you rather I would go back to?

MR. HALPERIN:

The date that shows they are represented.

MR. MOSCOVITZ:

You don't want the record to show whether or not the majority of the employees, designated Mr. Posner as their representative for pur-

poses of collective bargaining any time before September eighteenth, is that right?

MR. GIROFSKY:

There is no testimony here as to whether or not there is a majority.

MR. MOSCOVITZ:

We certainly expect to have such testimony in the record, conclusively one way or the other, before we close our case. This is part of our procedure. I made this request in accordance with my plan of proceeding. I just want to get straight the suggestion of counsel. Is my position clear?

TRIAL EXAMINER GATES:

Surely, it is clear to me.

MR. HALPERIN:

It is our contention at the date these persons walked out, on the date they chose their representative as the basis of comparison under the Act, of when the fifty per cent is computed. In other words, if five or six girls were laid off prior to the date these girls chose their representative why they could not properly make a complaint to their representative. That is the contention of counsel.

MR. MOSCOVITZ:

Of course, they could, if they were laid off. A person laid off in good faith is considered as being in a suspended state of employment with a certain interest in continued employment and thus can be considered as a part of a roster of those who choose someone for the purposes of representation.

TRIAL EXAMINER GATES:

As I understand it you would like to have the

names of all the employees of two or perhaps more dates. At least two dates.

MR. MOSCOVITZ:

I would like to have it from August fourteenth through September eighth.

TRIAL EXAMINER GATES:

For each week.

MR. MOSCOVITZ:

Each payroll week, so there can be a basis of comparison, to see who were new and who were dropped out and so on. Whether they were additional employees. Miss Yemma, for instance was laid off. That might mean a difference in the total number. Someone might have been taken on to take Miss Yemma's place, and again you have a difference in the roll. I don't see how you can have the two pictures before you unless that is done, under the circumstances. It is a little laborious. We could not possibly stipulate on it.

MR. HALPERIN:

If you would take our list of those who were left.

MR. MOSCOVITZ:

That is typewritten?

MR. HALPERIN:

Yes.

MR. GIROFSKY:

Mr. Fainblatt's statement is taken from his book.

TRIAL EXAMINER GATES:

Q. Mr. Fainblatt, of those included in your payroll for the period ending September twenty-first, how many went out on strike on September eighteenth?

A. According to my book I find twenty-two. This is the best that I can make out on the book. Of course, I have a new bookkeeper and that bookkeeper, of course, is not so acquainted with—at that time, she was not so familiar with all the employees. How many is on my list on that day. We have only twenty-one, according to the bookkeeper, but I think it should be twenty-two.

MR. MOSCOVITZ:

Q. That does not include those who were, as you say, laid off, and we say discharged, before the date of the strike?

MR. HALPERIN:

Q. That is those who walked out.

BY THE WITNESS:

Q. The Examiner wanted me to check up on the books.

MR. MOSCOVITZ:

My request is before the Examiner that Mr. Fainblatt read into the record from August twenty-first to September twenty-first, we will say, the names of those on the employment rolls that may be a basis of comparison to show the new people taken on and people who may have been dropped.

TRIAL EXAMINER GATES:

There was no possibility of arriving at a stipulation on this?

MR. HALPERIN:

Evidently no. Our list is made up from Mr. Fainblatt's books they gave us. He has a list of those that went out.

MR. MOSCOVITZ:

Why should there be any objection to Mr. Fainblatt reading from the original record?

TRIAL EXAMINER GATES:

There is no objection so far as I am concerned.
It is a question of expedition.

MR. MOSCOVITZ:

I will accept any suggestion any one can make which will expedite this in a manner which will properly bring from the record the true picture.

MR. GIROFSKY:

If you don't want to accept this you will have to proceed as you desire.

MR. MOSCOVITZ:

Put the book in the record.

MR. HALPERIN:

It will have to go to Washington.

MR. MOSCOVITZ:

We will make photostatic copies of the necessary pages and return it. There is an offer made in good faith which will dispose of the entire matter. Take the appropriate pages, the pages we are inquiring after in the book and photostat them and return them to Mr. Fainblatt within twenty-four hours, with the understanding that the photostat sheets be made part of the record, of course.

TRIAL EXAMINER GATES:

Is that satisfactory to you?

MR. GIROFSKY:

No.

MR. MOSCOVITZ:

Counsel for the respondent will not accede to that suggestion.

MR. GIROFSKY:

If you want me to proceed to remember the names.

MR. MOSCOVITZ:

Either way. That would expedite the entire thing because the names are going to be read any way. A photostatic copy of it would stop the proceedings at this point. You might be able to have it done in town before the day is over, if there is any photostatic equipment here. I could have it done in New York and send it back to you. It would shorten the proceedings an hour.

TRIAL EXAMINER GATES:

I, personally, would favor that.

MR. MOSCOVITZ:

We are not interested in the amounts they received. We could have a cardboard placed over that. It is a question of names and dates.

TRIAL EXAMINER GATES:

Perhaps Mr. Girofsky would like to discuss this with Mr. Fainblatt. We will have a five minutes' recess.

(Thereupon at 11:15 a recess was had until 11:20).

MR. MOSCOVITZ:

It is hereby agreed and stipulated between counsel for the respondent and myself that the payroll book which is now being furnished by Mr. Fainblatt of Somerset Manufacturing Company have certain pages, hereinafter referred to photostated, the photostated pages to be incorporated as part of this record. The pages start with week ending August Sixteenth, 1935, through September twenty-first, 1935. It is also agreed and stipulated that the wage references which will appear on the photostated pages shall not be included as part of the record.

It is further understood that the record designated as the time book, which we have been referring to in this stipulation, shall be turned over to the stenographer in this proceeding who will take it with her and arrange for the photostating and also assume the responsibility for returning the time book to Mr. Fainblatt immediately after photostating. Of course, the time book refers only to the Somerset Manufacturing Company. An explanation of Somerset Manufacturing Company can be gotten by referring to the stipulation previously entered into between counsel for the respondent and the Government.

Cross Examination

BY MR. HALPERIN:

Q.- Will you refer to your book, Mr. Fainblatt and tell me the last date that Miss Fay Katz was employed by you?

A. September eleventh.

BY MR. MOSCOVITZ:

Q. That is the last day she worked?

A. Yes.

BY MR. HALPERIN:

Q. What day did she receive her pay?

A. The following week, on Thursday.

Q. That would be the twenty-first?

A. Our week's work is figured from Monday. If Thursday was the nineteenth, then she received pay on the nineteenth. Whatever they work this week they get paid for the following week on Thursday.

Q. Miss Ethel Rice?

A. The last day she worked was Friday.

BY MR. MOSCOVITZ:

Q. Was she working August 28th?

A. No, she was not.

Q. The last day she worked was August 16th?

A. Yes.

Q. She was paid when?

A. The following Thursday.

Q. The twenty-second?

A. I suppose so.

Q. Theresa Yemma?

A. August 21st.

Q. She got paid when?

A. She got paid—

BY MR. MOSCOVITZ:

Q. Wouldn't she get paid for the week ending August 23rd when everyone else got paid? She was out on Wednesday.

A. She would not get paid the same week. She would get paid the following week.

BY MR. HALPERIN:

Q. It was August 29th?

A. Yes.

Q. Mary Gecik?

A. She worked until August twer first, and was paid the following week, the twenty-fourth.

Q. Lorraine Heitz?

A. She was Lorraine Vones who later married and was known as Lorraine Heitz. The last day she worked was Wednesday, August twenty-first, and was paid on August twenty-ninth.

Q. Angelina Matteis?

A. August twenty-ninth, and she was paid August twenty-ninth.

Q. Mary Demko.

A. July twenty-sixth, and she was paid on August first.

Q. Sylvia Millano?

A. July 26th. She was paid on August second.

Q. Mayme Ross.

A. July twenty-eighth, and got paid the following week, August fourth.

Q. Frank Ross.

MR. MOSCOVITZ:

A. He is not in it at all.

MR. HALPERIN:

Just for the purpose of the record.

(It was stipulated between counsel that Frank Ross is not to be included as one of the members of the Union in this case for the purpose of collective bargaining.)

BY MR. HALPERIN:

Q. Let's go to Elizabeth Schaka.

A. August twenty-first; paid on August twenty-ninth.

Q. Mary Petrone. Sometimes known as Marie Thomas.

A. Mary Thomas, July twenty-fourth. And she was paid July thirtieth.

Q. Jean Colenda.

A. August twentieth and paid on August twenty-ninth.

Q. Mrs. Gutooski—Lottie Gutooski.

A. August ninth. Paid on August fifteenth.

Q. Vincent Macastro.

MR. MOSCOVITZ:

Jimmy is being left out of this calculation.

BY MR. HALPERIN:

Q. Magdalena Pisane.

A. July twenty-eighth, and was paid July third.

Q. Josephine Herman.

A. September thirteenth. Paid on September nineteenth.

Redirect Examination

BY MR. MOSCOVITZ:

Q. I just want to ask one very simple question. Mr. Fainblatt, you are still engaged in business in Somerville?

A. Yes.

Q. And the same line of work?

A. Yes.

Q. And it is necessary for you, is it, according to your capacity of business to take on people and possibly at times lay people off, is that right?

A. Sometimes we lay people off, when we don't need so much people.

Q. How many people have you in your business experience in Somerville aside from the people who are involved in this case as supposed to have been discharged?

A. I don't understand.

Q. Aside from the girls who were named in this case under Section 8, Sub-section 3 of the Complaint, have you ever discharged anybody?

A. I don't know. I don't understand what you mean.

MR. GIROFSKY:

What is Section 8.

MR. MOSCOVITZ:

I will make it a little clearer. I am trying to be too expeditious I am afraid. The complaint named certain girls, Elizabeth Scheka, Lorraine Heitz, and others in Paragraph three

of the complaint. The Board takes the position that these people were discharged and I understand that it is your position that they were not discharged. Now, aside from these girls have there been any other girls that you have discharged?

A. I don't remember.

MR. GIROFSKY:

The testimony is that he has not discharged any girls.

BY MR. MOSCOVITZ:

Q. And you have not discharged any girls?

A. No.

Q. The girls that we have been going over in this list with your counsel just now are girls who have been laid off?

A. Yes.

Q. And they are not discharged?

A. No.

Q. They are laid off?

A. Yes.

BY MR. HALPERIN:

Q. In other words, work was slow, Mr. Fainblatt, and you just laid them off?

A. Yes.

(Witness dismissed).

HARRY A. POSNER was recalled to the stand.

Direct Examination

BY MR. MOSCOVITZ:

Q. Do you have records, Mr. Posner, in your

possession of members of the organization involved in this controversy?

A. Yes.

Q. Are the persons named in those records persons who went out on strike September 18, 1935 in the Somerset Manufacturing Company?

A. Yes.

Q. Are they also persons alleged to have been discharged by the said Company?

A. Yes.

Q. Are they also persons who may have been laid off by the said Company?

A. Yes.

Q. Are such records as you may have records which are kept in your possession?

A. Yes.

Q. Are you in full control and are you fully responsible for them?

A. Yes, sir.

Q. Do the records contain the original signatures of the members?

A. Yes, sir.

Q. Written in their own handwriting?

A. The signatures are all in their own handwriting.

Q. That is the question, just answer the question. The signatures are all in their own handwriting?

A. Yes.

Q. And so far as other writing and markings on the card are concerned, they may be how?

A. Some in my handwriting and some in their own.

Q. And that, of course, is writing in answer to certain questions which appear in typewritten form on such cards?

A. Yes.

Q. Do the cards indicate the date the members signify their intention to become associated with your organization?

A. Yes.

Q. Do you have those cards with you?

A. Yes, sir.

Q. May I see them?

(Mr. Moscovitz examined the cards handed to him by Mr. Posner.)

MR. MOSCOVITZ:

I offer them.

(Mr. Halperin examined the cards.)

MR. MOSCOVITZ:

I offer them in evidence. I will have them marked for identification, if you will.

(The cards referred to were marked, B-11 to B-44 inclusive.)

BY MR. MOSCOVITZ:

Q. These cards which are marked for identification, 11 through 44 are membership cards of the organization?

A. Yes.

Q. And they indicate that you are the representative of these particular persons?

A. Yes, sir.

MR. MOSCOVITZ:

I will offer them.

MR. HALPERIN:

These cards are only secondary evidence of what counsel is trying to prove. What he is trying to show is the number of persons whom he claims went out on strike, or were laid off, and is laying the foundation for computing the number of persons that authorized Mr. Posner here

to act for them. I think that is the purpose for it. Now, these cards are self-serving. The best evidence undoubtedly are the girls. We don't know whether these girls worked here. We don't know who some of these people are.

MR. MOSCOVITZ:

The record Mr. Fainblatt introduced will correspond with that.

MR. HALPERIN:

The reason I am saying this is because of the fact I have gone through these cards and some of the names that appear here don't appear on the employer's list. We don't know who these people are, and when they are trying to use the names on these cards for the purpose of lying the foundation, I don't think it is fair to the employer. I hate to prolong the proceedings, but it is for his interest that we do so.

MR. MOSCOVITZ:

We offer these records which are the original Union records in this case. We offer them as a basis for comparison of the Union records with these which were introduced by Mr. Fainblatt so the record may show a basis of comparison. There may be some basis for comparison. We cannot at this time bring the persons who signed these cards.

TRIAL EXAMINER GATES:

I think it is customary to use records such as that for establishing to the extent that it does establish membership and representation. And they are admitted, recognizing of course, that there would have to be correspondence between the names on the cards and the names on the employer's book.

MR. GIROFSKY:

Is it binding on the employer?

TRIAL EXAMINER GATES:

Certainly.

MR. HALPERIN:

That means we will have to disprove them. They are offering them. They have got to prove them. They have got to prove these people worked there. If they were discharged or laid off.

MR. MOSCOVITZ:

Mr. Fainblatt's record will prove that point.

MR. HALPERIN:

I will take exception and let them go on.

TRIAL EXAMINER GATES:

They are admitted.

(The documents referred to were admitted to evidence and marked B-11 to B-44.)

MR. MOSCOVITZ:

We understand these are admitted in accordance with your ruling and the Board in consideration of these records will attach to them whatever weight it deems advisable under the circumstances.

TRIAL EXAMINER GATES:

Q. As far as you know, there are no cards in there of people who were not employed by the Somerset Manufacturing Company at about the time of the signing of the card, is that correct?

A. Yes.

Q. You know that only insofar as the signers of the cards have told you so?

A. I also know it from implication by other witnesses in the shop verifying that they were workers in the shop.

MR. HALPERIN:

May I have a chance during the recess to examine these cards? I will be responsible for them.

TRIAL EXAMINER GATES:

Do you have anything further at this point?

MR. MOSCOVITZ:

I would appreciate it very much if we could continue the cross-examination at this time and dispose of the matter.

MR. HALPERIN:

We will take each one by one.

MR. MOSCOVITZ:

I prefer that we continue the cross-examination.

Cross Examination

BY MR. HALPERIN:

Q. Mr. Posner, we will take the first one, Mary Petrone. When was the first time you met Mary Petrone?

A. On August 28th. Now Mary Thomas.

Q. Where was the place that you met her at?

A. Raritan, at the Harmony Hall.

Q. You, of course, never saw her working in the plant?

A. No, I did not.

BY MR. MOSCOVITZ:

Q. Did you ever see any of them?

A. No, I did not.

MR. GIROFSKY:

This is cross-examination.

MR. MOSCOVITZ:

We will stipulate that he never saw any.

BY MR. HALPERIN:

Q. All this information you have is hearsay?

A. Information she gave me personally when I accepted her card.

Q. Do you know when Mary Petrone stopped work?

A. I could not tell you off-hand. I am not informed at the present moment when she stopped working.

Q. Mayme Ross.

A. I know Mayme Ross, one of the workers of the shop.

Q. You did not see her working there?

A. I did not.

Q. You know from hearsay?

A. She told me and also from what other workers have told me.

Q. Where was that when you first met Mayme Ross?

A. I first met Mayme Ross at Harmony Hall in Raritan.

Q. What day?

A. I can't remember the date. The date that the card stipulates.

Q. Do you know what date Mary Petrone left the employ of the respondent?

A. I do not.

Q. Frances Cicero.

A. I know Frances Cicero.

Q. Do you know the day Frances Cicero left the employ of the respondent?

A. I do not.

Q. All the information that you know about her is what you have obtained by hearsay?

A. From herself and also from other workers.

MR. MOSCOVITZ:

I object to the use of the word hearsay. You ask the witness for a legal conclusion.

BY MR. HALPERIN:

Q. Did you ever see Frances Cicero working at the plant?

A. I did not.

Q. Did Frances Cicero herself tell you she was working there?

A. She did.

MR. MOSCOVITZ:

If I may interrupt, I am perfectly willing to stipulate all that. I am perfectly willing to stipulate in the first place that the signers of these cards gave Mr. Posner the information. In the second place, that Mr. Posner never saw any of these signers working at the plant. He acts in that regard on information and belief. We are willing to let the record speak for itself, and are willing to let Mr. Fainblatt's record speak for itself.

BY MR. HALPERIN:

Q. Do you know Teresa Barona?

A. I did.

Q. Do you know when Teresa Barona signed the card?

A. I cannot remember dates, my friend.

Q. You don't remember. I don't belong to the Union so I am not a friend.

A. I consider you a friend.

Q. Do you know when Teresa Barona left the employ?

A. I do not.

Q. Do you know Margaret Kopf?

A. I do not.

Q. Do you know when she signed her card?

A. I could not tell you.

Q. Do you know whether she is a member of the Union or not?

A. I don't know anybody by the name of Margaret Kopf.

Q. Do you know whether Margaret Kopf was ever given notice by you to attend a meeting?

A. I could not say. Probably the girls did speak to her, I don't know.

MR. HALPERIN:

I would like to put the stipulation on for you to save time, to the effect that—

MR. MOSCOVITZ:

If you will just agree to the stipulation I read to the record before.

(The stenographer read back the stipulation made by Mr. Moscovitz; Line 6, Page previous to this one.)

BY THE WITNESS:

A. All the information I have on these cards was given to me by the signers themselves, and a good deal of information furnished by some other workers who verified that they also belonged to the shop.

MR. HALPERIN:

Will he say, all the information contained in the cards referred to was given to me by the girls who signed them and I know nothing of my own knowledge as to the truth of the statements therein contained.

MR. MOSCOVITZ:

I can't accept that.

MR. HALPERIN:

He says he was not there.

MR. MOSCOVITZ:

That part I don't agree with. This must not be taken from the record that he has spoken with these people who signed. They have told him that they work there. Now he has not seen them working there. I think, let the facts speak. I don't want to draw any conclusions.

MR. HALPERIN:

All I want to say is, it is hearsay.

MR. MOSCOVITZ:

Hold on to the facts. If the true facts are there let somebody draw conclusions. I don't want any reinforcements drawn on anybody's position. We just want the facts.

MR. HALPERIN:

You are arguing about something that does not amount to anything.

MR. MOSCOVITZ:

If it doesn't amount to anything will you withdraw it?

MR. HALPERIN:

I will withdraw it. I have concluded my cross examination.

(Witness dismissed.)

MR. MOSCOVITZ:

At this time I would like to make a motion. I move at this time, Mr. Examiner, that the pleadings in this case be made to conform to the proof, in addition I move that the testimony of Miss Yemma be introduced by amendment, incorporated in the complaint, as part of the allegations contained therein. Specifically as to the allegations contained in Section 8, Subdivisions 1, 3, and 5.

MR. GIROFSKY:

I respectfully submit, Your Honor, we were served with the charges and prepared our case on the basis of the charges and allegations in the complaint. I respectfully submit, Your Honor, that Mr. Moscovitz is not amending his complaint. But making an addition to the complaint. It is not properly before you as an amendment.

TRIAL EXAMINER GATES:

What specifically are you referring to, Mr. Girofsky?

MR. GIROFSKY:

Specifically to the addition of the name Yemma to the list of girls in Paragraph 3 of the complaint. Is that the proposed amendment?

MR. MOSCOVITZ:

That is it, sir.

MR. GIROFSKY:

It is not properly an amendment. It is an additional charge with which we were not served and with which we had no opportunity to answer. In the way of answering pleadings. If Mr. Moscovitz's proof does not conform with the allegations in submitting evidence, he may file such supplementary complaint. We insist upon being served in accordance with the rules and provisions of the Act.

TRIAL EXAMINER GATES:

Did you file an answer, specifically referring?

MR. MOSCOVITZ:

Mr. Examiner, does Mr. Girofsky object to the motion to conform to proof? As well as

the motion to include Miss Yemma? You object to everything?

MR. GIROFSKY:

You have one motion?

MR. MOSCOVITZ:

It is in effect one motion.

MR. GIROFSKY:

I object to it.

MR. MOSCOVITZ:

I stand on the motion to conform to proof in this case, Mr. Examiner. It is quite proper in these proceedings and in accordance with practice. So far as Miss Yemma is concerned, I submit the same statement in support of my motion regarding her specifically. I may say further that her testimony was given, joined in by cross-examination by the respondent, who is not taken by any surprise obviously, given full opportunity to cross examine.

MR. GIROFSKY:

Now the proposed change that Mr. Moscovitz desires to make is really an additional charge. The rules promulgated by this Board require that such a charge be in writing, filed with the Board, and to be signed under oath. If Miss Yemma wants to make a charge or Mr. Posner wants to make a charge, and I submit let them serve us with the charge after it is properly filed. It is not an amendment in the true sense of the definition of the term amendment.

MR. MOSCOVITZ:

If there were anything strange about the motion that I am making, if it was not made day after day in all proceedings, regardless of whether they be administrative or not, I might

give some pause and thought to Mr. Girofsky's arguments. However, under the statute under which we are operating, I submit the motion should be granted without further argument.

TRIAL EXAMINER GATES:

What about the position of Mr. Girofsky in answer to Yemma?

MR. MOSCOVITZ:

I say that should also be granted in the motion to conform. But in addition I say that despite that fact, Mr. Girofsky, as counsel for the respondent has joined in the examination of this witness without raising any objection.

TRIAL EXAMINER GATES:

Is it your contention that no charge is necessary in order to have her name added to the complaint?

MR. MOSCOVITZ:

Exactly. Those are new facts which developed during this inquiry, joined in by respondent, without objection or exception, without voicing any statement of surprise. Now, in view of the character of the proceedings, especially, the motion should be granted or the Trial Examiner certainly should not hastily pass upon it, and should take it under consideration.

TRIAL EXAMINER GATES:

Mr. Girofsky, is this any substantial prejudice to your case?

MR. GIROFSKY:

I have not had an opportunity to file a proper pleading with the addition of a new person listed as one discharged. It is really an additional charge, Mr. Examiner.

TRIAL EXAMINER GATES:

How much time would you require to file an amended answer, or an amendment to the answer as to that person?

MR. GIROFSKY:

Are you permitting it?

TRIAL EXAMINER GATES:

I am asking how much time is required.

MR. GIROFSKY:

We can't file an amended answer until they file a supplemental complaint.

TRIAL EXAMINER GATES:

I think it is customary to move to amend in this manner. The only thing I want to do, I am disposed to grant the motion, but I want to give you all possible protection in the matter.

MR. GIROFSKY:

The rule it seems under Article II with respect to the charge, Section 2 or Section 3, such charge shall be in writing, the original being signed and sworn to before a Notary Public or any agent of the Board authorized to administer oath or acknowledge them. Three additional copies of such charge shall be filed. Blank form for making the charge will be supplied by the Regional Director upon request.

TRIAL EXAMINER GATES:

We are familiar with the rules.

MR. GIROFSKY:

I would like to have it in the record to show the rules are not being complied with.

MR. MOSCOVITZ:

The insertion of Miss Venma's name does not change the character of the charge. The charge stands as it is. We are simply adding a

name to it. The question of whether or not the motion should be granted or denied, it seems to me is a question of due process.

MR. GIROFSKY:

We are not getting due process here.

MR. MOSCOVITZ:

I must state for the record, in view of the fact that I pay no attention to that slighting remark by counsel for the respondent since it is not in accordance with the facts and circumstances of this proceeding, that it be for the Trial Examiner to determine whether or not there has been propriety during these proceedings. I must say, further, in my opinion as a matter of due process, the respondent has been faced with the witness, he participated in examination without objection or exception.

TRIAL EXAMINER GATES:

I will grant the motion. Unless Mr. Girofsky has some specific request to make which is reasonable as a condition to granting the motion, as to filing amended answer here.

MR. GIROFSKY:

I submit then, Your Honor, at this time that you grant a stay of the proceedings until I have had an opportunity to properly file an answer with the Board and properly prepare a defense, since there is an entirely new charge.

TRIAL EXAMINER GATES:

It is not a new charge. I see nothing of surprise in it. We will have an hour's recess.

(Thereupon the hearing adjourned at 12:30 o'clock.)

After Recess

(The hearing reconvened at 1:30 o'clock.)

MR. GIROFSKY:

If the Court please, I understand that Mr. Moscovitz moved to amend his complaint to conform with the proof. And now I wish to amend the answer to the extent that I wish the allegations in the answer pertaining to the girls originally named in the complaint shall apply also to the amendment submitted and proposed and adopted by Mr. Moscovitz.

MR. MOSCOVITZ:

No objection.

TRIAL EXAMINER GATES:

That is, as I understand it, you wish to have your answer apply also to Miss Yemma?

MR. MOSCOVITZ:

Have the answer conform to the new pleading. No objection.

MR. GIROFSKY:

At this time I wish to file with the court in pursuance to the requirements under the rules a motion; three copies have been served upon or delivered and filed with the Board. That is right, Mr. Moscovitz?

MR. MOSCOVITZ:

Correct.

MR. GIROFSKY:

Asking you as the examiner and judge in this cause to dismiss the complaint herein filed on the grounds enumerated in the motion. I don't believe it is necessary for me to recite or read these various grounds for dismissal since the motion in written form goes as part of the record.

MR. GIROFSKY:

I make application at this time to dismiss on the grounds cited in the written motion.

TRIAL EXAMINER GATES:

The motion is denied.

MR. GIROFSKY:

I take exception. In view of the fact the Government or the National Labor Board has called Mr. Fainblatt, one of the respondents, and in view of the proof and evidence rather, thus far submitted, respondent will rest without any further hearing.

TRIAL EXAMINER GATES:

Before this hearing is concluded I wish to state for the record that the National Labor Relations Board has taken jurisdiction of this case away from the Second Region which instituted the proceeding, in the manner customary and in accordance with the rules and regulations of the Board. The parties have five days in which to petition the Board that they wish to argue the matter orally before the Board, and ten days in which to file briefs if they care to file briefs. Otherwise the record will be the basis for the decision by the Board as it now stands. Unless the Board should conclude that it is desirable to re-open the hearing in order to obtain additional evidence.

If there is nothing further from counsel I will now adjourn this hearing upon further call of the National Labor Relations Board.

(The Hearing, thereupon adjourned at one-forty-five, P. M.)

**ORDER DIRECTING TRIAL EXAMINER TO
PREPARE AND FILE AN INTERMEDIATE
REPORT**

A hearing having been duly held in this proceeding before Robert M. Gates, the duly appointed Trial Examiner, and the proceeding having been transferred to and continued before the Board in accordance with Section 35 of Article II of National Labor Relations Board Rules and Regulations—Series 1,

It is hereby directed, in accordance with Section 36(a) of Article II of said Rules and Regulations, that the Trial Examiner, Robert M. Gates, prepare and file his intermediate report as provided in section 39 of said Rules and Regulations, except that such report shall be filed with the Board.

By direction of the Board:

BENEDICT WOLF.

Secretary.

(Seal)

INTERMEDIATE REPORT

Upon charge duly made, and acting pursuant to authority granted in Section 10 (b) of the National Labor Relations Act, approved July 5, 1935, Elinore Morehouse Herrick, agent of the National Labor Relations Board, acting pursuant to its Rules and Regulations, Series 1, Article IV, Section 1, issued its complaint dated January 28th, 1936, against Benjamin Fainblatt, also known as Benjamin Feinblatt, and Margorie Fainblatt, also known as Margaret Fainblatt, individuals, doing business under the firm names and styles of Somerville Manufacturing Company and Somerset Manufacturing Company, the respondent herein. The complaint and notice of hearing thereon were duly served upon respondents on January 29th, 1936, in accordance with said Rules and Regulations, Series 1, Article V, Section 1. The complaint was amended by motion at the hearing.

The complaint as amended alleged: That the respondents since August 7, 1934, have been doing business individually under the firm names Somerville Manufacturing Company and Somerset Manufacturing Company, in Somerville, New Jersey; and that in the course and conduct of their business respondents have purchased substantially all raw materials used in manufacturing operations at Somerville, N. J., in states other than New Jersey, and have sold a substantial amount of the goods manufactured in Somerville, N. J., to purchasers outside the state of New Jersey, which constitutes a continuous flow of commerce among the several states. That respondents discharged eight girls during the period

from the middle of August to the middle of September, because the girls had joined Local No. 149, International Ladies' Garment Workers' Union, constituting a violation of the National Labor Relations Act, (hereinafter called the Act) Section 8, subdivisions 1 and 3. That a majority of the production employees of respondent had designated the International Ladies' Garment Workers' Union, Local No. 149, by Harry A. Posner, its manager, as their representative for collective bargaining with respondent, on August 28th, 1935; and that having been selected by a majority, Local 149 was thereafter the sole representative of respondents' employees for the purpose of collective bargaining, by virtue of the National Labor Relations Act, Section 9(a). That on or about September 13, 1935, Mr. Posner requested respondents to bargain collectively in respect to conditions of employment, but that respondents refused and as a result the union called a strike. That a majority of respondents' employees went on strike, that Posner has continued to represent a majority of the employees, but that respondents continue their refusal to bargain with him as the sole representative of the employees, in violation of Section 8, subdivisions 1 and 5 of the Act. And that these violations of the Act, constitute unfair labor practices affecting commerce.

Thereafter respondents filed their answer. The answer was amended by motion at the hearing to conform to the amended complaint. The answer as amended alleged: That the respondents are in business in Somerville, N. J., as alleged in the complaint, but they deny that they are engaged "in the sale and distribution of womens' sportswear". That respondents have no knowledge or information sur-

ficient to form a belief as to (1) an appropriate unit in respondents' plant for the purpose of collective bargaining; (2) the selection of the International Ladies' Garment Workers' Union, Local No. 149, by Harry A. Posner, its manager, as the representatives of a majority of respondents' employees; (3) the continued refusal to recognize and deal with Posner after the strike; and (4) the acts of respondents, alleged in the complaint, constituting unfair labor practices affecting commerce. The answer denied all other allegations of the complaint, and contended that the Act is unconstitutional and not applicable to the business of the respondents.

Pursuant to the notice of hearing, the undersigned, as Trial Examiner of the National Labor Relations Board, designated to conduct hearings in this case, conducted a hearing on February 17, 18 and 19, 1936 at Somerville, N. J. The respondents appeared specially by Leon Girofsky, T. Girard Wharton, and Joseph Halpern, and participated in the hearing. The International Ladies' Garment Workers' Union, Local No. 149, appeared by Alexander Feller. Full opportunity to be heard, to cross examine witnesses, to produce evidence bearing upon the issues, and to file briefs, was afforded to the parties. Respondents did not call any witnesses or produce any evidence in support of the answer.

The National Labor Relations Board ordered the proceedings transferred to and continued before the Board in accordance with Section 35 of Article II of the Rules and Regulations, Series 1, and directed that the undersigned as Trial Examiner, prepare an intermediate report and file said intermediate report with the Board, in accordance with the Rules and Regulations, Series 1, Article II, Section 36(a).

At the beginning of the hearing and at the conclusion of the case for the Board, counsel for respondents moved to dismiss the complaint on the grounds that the National Labor Relations Act is unconstitutional, and if constitutional the Act is not applicable to respondents' business. Both motions to dismiss were denied. At the conclusion of the case for the Board, counsel for the Board moved to amend the complaint by including the name of Theresa Yemma with the others alleged to have been discharged by respondents, and by having the pleadings conform to proof. The motion was granted. Counsel for respondents moved to have the answer conform to the amended complaint. The motion was granted.

Upon the record as thus made, the stenographic report of the hearing and all the evidence, including oral testimony, documentary and other evidence received at the hearing, the undersigned makes, in addition to the above, the following specific findings of fact:

FINDINGS OF FACT

I.

THE SOMERVILLE MANUFACTURING CO. AND THE SOMERSET MANUFACTURING CO.

1. The Somerville Manufacturing Company and the Somerset Manufacturing Company, located in Somerville, New Jersey, were established on or about August 15, 1934. The complaint is against Benjamin Fainblatt, also known as Benjamin Feinblatt, and Margorie Fainblatt, also known as Margaret Fainblatt. It appears that the correct names

of these individuals are Benjamin Fainblatt and Margorie Fainblatt, respectively, and these names will be used hereafter in this report. Benjamin Fainblatt established the two companies using as capital money loaned to him by the Lee Sportswear Co. upon a chattel mortgage on the machinery in the plant. Mr. Fainblatt testified that he is the sole owner of the two companies, and that he has no financial interest in the Lee Sportswear Co. He also stated that the two companies were formed as a matter of convenience, for reasons not material here, but that he had discontinued using the name Somerville Manufacturing Co. and made the last shipment under that name in February 1935. Since that time he has used only the name Somerset Manufacturing Company. The Somerville, N. J., plant is the only plant of respondents. The company is not incorporated.

2. Benjamin Fainblatt is an exclusive contractor for the Lee Sportswear Co., 520 Eighth Avenue, New York, N. Y., and is engaged in the manufacturing of ladies sports garments, such as ski suits and skirts for winter wear, and shorts, slacks, blouses and skirts for summer wear, known in the trade as snow wear and beach wear. The Lee Sportswear Co. is a partnership composed of Leo, Irving and Margorie Fainblatt, children of Benjamin Fainblatt. Benjamin Fainblatt left the employ of the Lee Sportswear Co. to establish the business in Somerville. Although Benjamin Fainblatt states he is the sole owner of the Somerset Company, his daughter, Margorie Fainblatt, does give him assistance in the conduct of the business, in such matters as checking the payroll each week, and she is paid for this serv-

ice. She also occasionally gives instruction to Somerset employees in regard to making garments. Margorie Fainblatt is joined with her father as the registered owners of the Somerset Company, but Benjamin Fainblatt contends that she does not have any interest in the Somerset Manufacturing Co. and that he merely permitted her to register as a part owner, to avoid trouble with the code authorities.

3. The evidence does not disclose that the Somerset Manufacturing Company is owned completely or in part by the Lee Sportswear Co., but it does appear that the separate identities are largely fictitious and that in reality, if not legally, the two operations constitute a family business. The answer of respondents does not deny the allegation of the Board in respect to the connection of Margorie Fainblatt with the Somerset Manufacturing Company. In view of this and the admission that she is registered with the state or county officials as a part owner, the complaint should not be dismissed as to Margorie Fainblatt.

II.

THE DISCHARGES

4. On August 14th, 1935, after considerable discussion among the employees, three employees of the Somerset Manufacturing Company and Benjamin Fainblatt went to Plainfield, N. J., and there talked to Harry A. Posner, manager of Local No. 149, International Ladies' Garment Workers' Union. The three girls were Mary Morano, Ethel Rice and Anna Santoro. They asked Posner to organize the employees in respondents' plant. Posner agreed to have a meeting with the girls in the plant if there

was enough interest. On August 19th the three girls reported to him and arranged for a meeting to be held in Raritan, N. J., near Somerville, on August 21st. This meeting was held, during the course of which a number of respondents' employees applied for membership in Local No. 149. A second meeting was held on August 28th, and additional applications were received.

5. Fainblatt held two meetings with his employees, the first on the afternoon of August 21st, prior to the Union meeting, and the second on August 28th or 29th. Although these two meetings will be discussed more fully later in this report, they are mentioned now as throwing light upon the discharges alleged in the complaint. At the first meeting, Mr. Hess, Mayor of Somerville, and one other citizen spoke to the girls. At the second meeting, Mr. Adams, Sheriff of Somerset County, spoke. All three of the speakers advised the girls against joining the Union.

6. At a meeting on September 17th, following a report from Posner that Mr. Fainblatt refused to recognize and deal with him as a representative of the employees, the girls who had applied for membership in Local No. 149, as employees of the Somerset Manufacturing Company, voted to strike at ten o'clock on the following morning. On September 18th, 1935, pursuant to the strike call, between twenty-two and twenty-eight of the girls walked out. They were still on strike at the date of the hearing.

7. Elizabeth Schoka was employed as an operator by respondents in August, 1934. She was laid off

about Christmas of that year and recalled to work sometime later, in 1935. At the beginning of her employment she was rated as a learner, but subsequently her rating was changed to that of an operator and she was paid accordingly. Following the invalidation of N. R. A. codes, her rate was cut, but she continued to work about forty hours per week. She was paid on piece rates. During the summer months, following the cut in piece rates, she received between nine and twelve dollars a week.

8. On August 14th, 1935, Elizabeth Schoka met the three girls who had called upon Posner, after they had returned from Plainfield. She signed an application card that evening, applying for membership in Local No. 149. According to her testimony she was discharged the following day. Fainblatt testified that the last day Elizabeth Schoka worked was August 21st. The precise date is not important, and there was no testimony offered tending to contradict or disprove her account of what took place, irrespective of the date. About eleven o'clock in the morning, Elizabeth Schoka asked for more work. Mrs. Ruth Evans, the forelady, said "Mr. Ruby will attend to you." Mr. Ruby is the foreman of the shop. He told Elizabeth Schoka, "You are causing too much trouble. Get your work marked and go home." Mrs. Schoka followed his instructions. About a week prior to this she was taken into Fainblatt's office. Fainblatt asked her, "Who approached you to sign the union—Frank or his wife?" She replied "Nobody", and was permitted to leave. This would tend to indicate that Mr. Fainblatt's testimony in fixing the date of her discharge as August 21st is more accurate.

9. About August 22, 1935, Elizabeth Schoka obtained employment at Stars Dress Shop in Plainfield, N. J., for a period of four or five weeks, receiving \$17 a week. She stated that she came back for the strike, and that she was laid off because work was slack: The complaint uses the name Elizabeth Schoka.

10. Ethel Rice, a floor girl, was employed by the Somerset Manufacturing Co., in January, 1935. Following the invalidation of N. R. A. codes her wages were cut from 32 1/2¢ an hour to 25¢ an hour, and the hours of work became irregular, so that she did not always work a full time week of forty hours. Prior to August 14th, 1935 a number of the employees discussed joining a union, and as a result, Ethel Rice, Mary Morano and Anna Santera went to Plainfield to see Mr. Posner for the purpose of obtaining his assistance in organizing the employees. While there all three girls signed cards applying for membership in Local No. 149. The first meeting of the employees was to be held early in the evening of August 21st. On the afternoon of the same day Mayor Hess and Mr. Hawley spoke to the girls who were operators. The floor girls working on the floor below were not asked to attend the meeting. Due to the fact that there was a considerable amount of work to do, Ethel Rice and Lorraine Heitz worked overtime that afternoon during the time that the meeting was in progress. After the meeting they asked Mr. Fainblatt as to what time they should come in the following morning. He told them "I have no more work for you two girls—you can go to the union for work." Between the time of the meeting with Posner and the foregoing conversation with

Mr. Fainblatt, Ethel Rice had been active in interesting the employees in joining the union. Mr Fainblatt testified that Ethel Rice last worked for him on August 16th, but in view of all the other uncontradicted testimony of Ethel Rice and Lorraine Heitz, the date of the discharge must be taken to have been August 21st.

11. Ethel Rice and Lorraine Heitz went to the plant the next day to get their pay. As they approached the plant, the other floor girls waved at them from the windows on the third floor. The floor girls usually worked on the first floor of the plant. Lorraine Heitz asked Mr. Fainblatt whether he had any more work for herself and Ethel Rice. He replied, "I told you girls once before I have no more work for you." He then opened the door to the room where the floor girls usually worked and added, "You see, I have no more work for you—none of the girls are here." The following week when the two girls went back for the rest of their pay, they were paid by Miss Lee, as Marjorie Fainblatt is known to the employees of the plant.

12. Lorraine Heitz, a floor girl, started with the Somerset Manufacturing Co. in April, 1935. She applied for membership in Local No. 149 on August 21st, 1935, at the first meeting of the employees with Mr. Posner. Following the invalidation of N. R. A., her rate of pay was cut from 24¢ an hour to 21¢ an hour and then to 18¢ an hour. Her hours were irregular so that she did not regularly work a full time week of forty hours. About a week prior to the meeting on August 21st, Mr. Ruby, the foreman, asked Mrs. Heitz whether she had heard any-

thing about the union, whether she was interested in it, and several other questions about the union. She told him that she had no information for him. Her testimony as to the conversations with Mr. Fainblatt corresponds with the testimony given by Ethel Rice. Following her discharge she attended the union meeting on August 21st and there signed an application card which is dated August 28th. Mrs. Heitz states that the reason for this difference in dates is that the application card was only partially filled out during the first meeting and was completed at the second meeting a week later. She has not worked elsewhere since the date of her discharge, August 21st, 1935.

13. Angelina Matteis is an operator. She worked for the Somerset Manufacturing Co. for about one year prior to August 21st, 1935. During the last several weeks of her employment her weekly income ranged between \$8 and \$12, based upon piece rates. On the afternoon of August 21st she attended the meeting at which Mayor Hess and Mr. Hawley spoke, and on the way home from the plant she asked several girls whether they were going to the union meeting that evening. She attended the meeting and there signed an application card for membership in Local No. 149. The next morning when she came to the plant, she asked for work, but both Mrs. Evans and Mr. Ruby told her to wait. After waiting about half an hour Mr. Ruby called her aside and told her, "I am sorry, you are causing too much trouble. I have no more work for you." She asked him whether he could prove it and he said "No". She replied, "It is all right with me," had her work marked and then went home. About one

month prior to the hearing she was employed for one week at a plant in Plainfield for which she received between \$14 and \$15.

14. Mary Gecik, an operator, started working for the Somerset Manufacturing Co. in March, 1935. She was paid piece rates, and following the invalidation of N. R. A. codes, she received about \$7 of \$8 a week. She did not always work a regular full time week of forty hours. At the meeting of August 21st, she signed an application card, applying for membership in Local No. 149. She states that on August 29th, Ruby, the foreman, told her, "I have not any more work for you. You are causing too much trouble. If you want work go to the union. The union will give you work." She then left the plant. Mr. Fainblatt testified that August 21st was the last day that Mary Gecik worked for him, whereas she states that August 28th was the last day she worked, and this seems more consistent with the rest of her testimony, none of which is otherwise contradicted by respondents.

15. Theresa Yemma started working for the Somerset Manufacturing Co. in April, 1935, and was employed both as an operator and a floor girl. On August 29th, 1935 she went for her pay. Ruby, the foreman, told her that he did not have any more work for her, as she was causing too much trouble. She then left the plant. For several days prior to this Ruby had not given her any work at the same time that others were given work on which Miss Yemma had experience. Instead he told her to wait. Having no work during this period she generally left before the end of the day. Mr. Fainblatt's testimony that the last day Miss Yemma worked was

August 21st is not altogether inconsistent with her testimony.

From about the middle of September until two or three days after Christmas Miss Yemma worked at Treiber's plant on products similar to the products of the Somerset Company, where her pay averaged about \$13 a week. She also worked on Saturdays during the month of October, November and December, in a department store in Somerville where she received 21c an hour, and generally worked a nine hour day although some days she worked longer.

16. Fay Katz started working for the company in December, 1934, as an operator. Her pay was computed on the basis of piece rates, which were cut following the invalidation of the N. R. A. codes. On ski pants the rate was cut from 98c a dozen to 63c a dozen. During the last few weeks of her employment she did not work a full time week of forty hours regularly. When she did work forty hours her pay amounted to \$7 or \$8 a week. Mrs. Evans, the forelady, spoke to Miss Katz about the union on August 21st. On the same day Miss Katz attended the meeting of the operators on the second floor. Mayor Hess and Mr. Hawley spoke at this meeting. On August 28th a similar meeting was held at which Sheriff Adams spoke. All three of the speakers advised the girls against joining the union. Fay Katz applied for membership in the union at the first meeting of the girls on August 21st. The information on her card was filled in by Mr. Posner in her presence from information she gave him. She signed the card. The testimony is conflicting as to the last day Miss Katz worked. She stated that she last worked on Monday, September 16th, and again that

her last day was September 18th, while Fainblatt testified that the last day she worked for him was September 11th. However, his statement was not supported by further evidence. It is probable that fixing the date as September 18th was an error, in view of two other statements indicating that the day of the week was Monday. September 18th was on Wednesday, and was the day of the strike, the time of the walk-out being ten in the forenoon. She further testified that she didn't leave the plant on the day of her discharge until noon. While the evidence is not conclusive, it does not warrant a finding that the date was other than September 16th, especially as this does not prejudice respondents.

17. On Monday, September 10th, 1935, Fay Katz finished working on ski pants about eleven in the forenoon. Ruby, the foreman, told her to wait. Although she had experience in working on skirts he did not give her any work, but he did give work on skirts to girls who had not worked on them before. After waiting until twelve o'clock she was told by Ruby, "I haven't any work for you, come in tomorrow morning and I will start you on skirts." The following day when she returned to the plant Mr. Fainblatt would not let her in but detained her in the office. While there he told her, "I have no work for you." Miss Katz said to him, "You gave other girls work," and he replied "I don't owe you anything. If you want work you can go to the union." Miss Katz then left. Since that time she worked four and one half days in Plainfield for which she received "something over fifteen" dollars.

18. Anna Santoro started working for respondents when the plant was opened in August, 1934.

She worked as an operator and was paid on a basis of piece rates, earning \$8 or \$9 a week during the weeks prior to being laid off, and after the cuts in piece rates which took place following the invalidation of N. R. A. codes. On August 14th with Mary Morano and Ethel Rice, Mrs. Santoro went to see Mr. Posner in Plainfield. At this conference she signed a card applying for membership in Local No. 149. On September 18th Mrs. Evans, the forelady, said to Mrs. Santoro, "Annie, I heard you was the one that started all this trouble here. You went to Mr. Posner." Following this conversation Mrs. Santoro heard the girl next to her tell Mrs. Evans that Mrs. Santoro was going to blow the whistle as a signal for the girls to leave their work and walk out on strike. Mrs. Evans then talked to Ruby, the foreman, and came over to Mrs. Santoro, telling her, "No more work for you. You are the one that is going to blow the whistle." This occurred about fifteen minutes before the girls walked out. Mrs. Santoro then left, prior to the strike.

19. Respondents' answer alleges "that said employees were dismissed momentarily on the dates alleged in the Bill of Complaint until such time as respondents were in a position to furnish said employees with further work; that said employees have not, at any time, applied or returned to the respondents for employment." Mr. Fainblatt testified that the girls were temporarily laid off for lack of work. No evidence was submitted by respondents tending to prove their contention, nor is this position substantiated by the record of shipments from the plant during September and October. The testimony of Ethel Rice, Lorraine Heitz, Fay Katz and Theresa

Yemma tends to show that there was plenty of work. In laying off Ethel Rice and Lorraine Heitz, the only instance when Mr. Fainblatt or his supervisory employees appeared to give the employees this reason for the lay-off, he resorted to subterfuge to convince them that work was slack, and furthermore told them to go to the union for work. No weight can be attached to respondents' contention that these girls were temporarily laid off for lack of work.

20. Respondents also state that none of the girls applied for reinstatement. This is correct only as to some of the girls. The proof is not altogether conclusive that their representative, Mr. Posner, asked for their reinstatement in connection with his attempts to negotiate an agreement with respondents. Mr. Fainblatt's denial that Mr. Posner included reinstatement of the discharged employees as one of the terms in his proposal for settlement is evasive and almost convincing that the opposite is true. Posner denied that it was not included. However, the lay off in each instance was so final, reinstatement could not be expected even if applied for. Fainblatt testified that he is and has been willing to take back all of the girls as "individuals" if they come back peacefully, and if he has enough work. Although Fainblatt states that they may belong to any organization they see fit, by his use of the word "individuals" he obviously means individuals who have dropped union membership or who will not insist that the union represent them in collective bargaining in regard to conditions of employment. Such a position is untenable and it is difficult to believe that it was advanced in good faith when con-

sideration is given to the attempts of two of the girls, Ethel Rice and Lorraine Heitz, to be put back to work. That dropping union membership was a condition of reinstatement not only for the girls laid off but also for the strikers is further substantiated in the questions asked by respondents' counsel in cross-examining Mr. Posner. Respondents cannot escape responsibility for their own acts by attempting to throw further responsibility upon employees left to shift for themselves. In order to sustain a case before this Board, under all of the circumstances, it was not necessary for the girls laid off to make additional efforts to obtain reinstatement.

21. There is no contention that any of the girls laid off were inefficient, inexperienced, or had "caused trouble". The testimony of a number of the girls indicates that they were exceptionally good workers.

22. None of the employees, the subjects of the foregoing findings, are dues paying members in Local No. 149, but all have applied for membership. They are considered members according to the custom of the organization and are receiving strike benefits from the International Ladies' Garment Workers' Union.

23. From the testimony outlined above, it is apparent that there was a concerted drive on the part of respondents to break up the organization activities among the employees. When several of the girls were laid off they were told to go to the union for work. At the meetings of employees called by Mr. Fainblatt, public officials advised the girls not to join the union. Fainblatt, Ruby, and Mrs. Evans

questioned several of the employees about the union and kept themselves informed by reports from, or questions to, other employees. Many of the acts complained of occurred immediately before or immediately after important union events. On the witness stand Mr. Fainblatt exhibited extreme antipathy toward unions and union activities and objectives. He testified that no one can hire and fire without his approval. From all of his acts at the time and since, there can be no question as to his approving the acts of his supervisory employees, Ruby and Mrs. Evans, in laying off the employees here in question.

24. Lorraine Heitz was laid off before she applied for membership in Local No. 149. However, within the space of a few hours she did apply for membership and also for reinstatement. The attitude of Fainblatt in laying her off cannot be mistaken. She was laid off for having union sympathies and to discourage membership in Local No. 149. It is merely accidental, insofar as respondents are concerned, that she had not applied for membership at the actual moment of her lay off.

25. Said Elizabeth Schoka was discharged by Mr. Ruby, an agent of respondent, on August 21, 1935, said Ethel Rice and Lorraine Heitz were discharged by respondent Benjamin Fainblatt on August 21, 1935, said Angelina Matteis was discharged by Mr. Ruby on August 22, 1935, said Mary Gegik and Theresa Yemma were discharged by Mr. Ruby on August 29, 1935, said Fay Katz was discharged by Mr. Ruby on September 16, 1935, and said Anna Santoro was discharged by Ruth Evans, an agent of respondent, on September 18, 1935, and all of

them have since been refused employment by respondents, for the reason that said Elizabeth Schoka, Ethel Rice, Lorraine Heitz, Angelina Matteis, Mary Gecik, Theresa Yemma, Fay Katz, and Anna Santoro joined and assisted a labor organization known as International Ladies' Garment Workers' Union, Local 149, and engaged in concerted activities for the purpose of collective bargaining and other mutual aid and protection.

26. By said discharge and refusal to employ said Elizabeth Schoka, Ethel Rice, Lorraine Heitz, Angelina Matteis, Mary Gecik, Theresa Yemma, Fay Katz, and Anna Santoro, respondents have interfered with, restrained, and coerced their employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act.

27. By said discharge and refusal to employ said Elizabeth Schoka, Ethel Rice, Lorraine Heitz, Angelina Matteis, Mary Gecik, Theresa Yemma, Fay Katz, and Anna Santoro, respondents have discouraged membership in the labor organization known as International Ladies' Garment Workers' Union, Local No. 149.

III.

THE ATTEMPTS TO BARGAIN COLLECTIVELY

28. At the first union meeting, of the employees at Fainblatt's plant, on August 21, 1935, about twenty-five employees were there. All of them signed cards applying for membership in Local No. 149. The next meeting was held one week later, on August 28th, 1935. About ten additional employees were there who also signed cards. Additional cards

must have been turned in at about this time also, for Mr. Posner testified that the total membership in the Somerset plant was forty-three. During the hearing forty-two application cards were admitted in evidence. With the exception of two cards dated August 30, 1935, and one card dated September 4th, 1935, which was later withdrawn, all of the cards were dated on or before August 28th, 1935. Three were dated August 14, nineteen were dated August 21, and seventeen were dated August 28th, 1935. The testimony is conflicting as to whether the employees authorized the International Ladies' Garment Workers' Union, Local No. 149, and its manager Harry A. Posner, to represent them at the first or second of these meetings. There is no reason to doubt that the authorization occurred at one or the other or both of these meetings. Two more employees applied for membership on August 30th, and one more on September 4th. By applying for membership these employees must be taken to have ratified the action of the group. While the testimony and evidence as to the method of handling union business, indicates a disregard for some of the formalities, there is sufficient testimony and evidence to indicate that Posner was the choice of the group who applied for membership, in the absence of any showing to the contrary. Arriving at this conclusion is easier in view of the efforts of the girls to have Mr. Posner come to Somerville for the purpose of organizing the workers, and the deeply felt insistence of some of the girls, while on the witness stand, that the group wanted and needed him to represent them.

29. At both of the union meetings the girls pres-

ent told Posner of the conditions in respondents' plant, and at the August 28th meeting he was requested and authorized to present a proposed agreement to respondents for the purpose of improving the conditions of the employees in the plant. Pursuant to these instructions, Mrs. Posner met and conferred with Mr. Fainblatt on or about August 30th, 1935. Mr. Posner testified as to this meeting as follows: "I told him (Mr. Fainblatt) that I had several meetings with his workers and that we had discussed the conditions in the shop and that they had delegated me to present Mr. Fainblatt with demands improving their conditions, which I did, and Mr. Fainblatt listened to me very carefully and told me that he would take these demands into consideration, and he would let me know in a few days". Mr. Posner left a proposed agreement with Mr. Fainblatt. Not having heard from Mr. Fainblatt, Mr. Posner called him on the telephone on September 6th, 1935. He asked whether Mr. Fainblatt had any answer for him. Mr. Fainblatt told Mr. Posner that he would not recognize Posner as the representative of Somerset employees, and that he would have no dealings with Posner or the union. Mr. Posner reported this to respondents' employees who had selected him as their representative and on September 17th, 1935, the group voted to strike at ten o'clock on the following day. On September 18th, the strike was called as scheduled. Mr. Posner made no further attempts to get in touch with Mr. Fainblatt. Mr. Fainblatt testified at the hearing in this proceeding that he would not have an outsider running his business. This was in answer to the question as to whether or not he did or would deal with the union.

About ten days or two weeks later Mr. Posner called on Mr. Girofsky, respondents' attorney and representative. Mr. Girofsky told Mr. Posner, "that Mr. Fainblatt would not talk union or recognize anybody that had any connection with the union". No adjustment of the strike or the cause of the strike was reached.

At some later date a conference was held at which Mr. Fainblatt, Mr. Girofsky and Mr. Posner were present. Mr. Posner again submitted a proposed agreement, and informed Mr. Fainblatt that the union terms for settlement were a minimum wage of \$16 for a 37½ hour week, and a union shop.

About two weeks before the hearing Commissioner Moffett of the U. S. Department of Labor, Conciliation Service, suggested to Mr. Posner a settlement whereby seven girls would be taken back, the remaining girls to be taken back when work was available, and under non-union conditions. Posner refused to settle on these terms. It is a fair inference from this line of testimony that present conditions in the plant are slightly better than before the strike.

30. The tailoring department, which was the only department affected by the strike, in respondents' plant at Somerville, excluding supervisory employees, constitutes an appropriate unit for the purpose of collective bargaining. There is one office girl, working for respondents, and two supervisory employees—Mr. Ruby, the foreman, and Mrs. Ruth Evans, the forelady. These employees should be excluded from the bargaining unit. All of the operators and floor girls should be included in the unit. Although they work directly upon production and

their names are kept upon the pay-roll, the two cutters Charlie Grill and Joe—as he is designated on respondents' payroll—and Mrs. Smith, the finisher, do not work regularly. These employees should be excluded from the unit. In addition the cutters are engaged in work entirely different from that of the operators and floor girls, and are in a separate department, known as the cutting department. The record does not clearly indicate the complete duties of the four "general men", Jimmy, Al, Eddy, and Tony. However, from Mr. Fainblatt's testimony it appears that although some of the general men may occasionally work on garments, their regular duties more frequently include cleaning the floor, "carrying from one to another", fixing the belts on machines, shipping the finished garments, cleaning the machines, and otherwise assisting Mr. Fainblatt in whatever there is to do. Their principal duties are not related to production, and hence they should be excluded from the unit.

31. Respondents' payrolls for the weeks ending August 16th, 23d, and 30th, and September 7th, 14th, and 21st, 1935, were introduced in evidence. A number of employees were listed on the payrolls who did not work in a particular week. Mr. Fainblatt also testified that there were a number of girls laid off temporarily because of lack of work. The names of these employees do not appear on the payrolls. No new names appeared on the payrolls during this six-week period replacing the eight girls involved in this proceeding. In view of the authorization given to Mr. Posner on August 28th, the most appropriate period for computing the number of employees in the unit is for the week ending August

30th. To avoid uncertainties as to the status of laid off employees, it is necessary that the computation should include only those employees who actually worked during that week. During the week ending August 30th, 1935, the names of sixty-five employees whose occupations entitle them to be included in the unit, appeared on the payroll. Of this number, according to the symbols and figures on the payroll, only fifty worked at any time during the week. To this number must be added the six girls found to have been discharged in violation of the Act prior to this date. It is well established in matters of this nature, that an improper discharge should not operate to prevent an employee from joining with fellow employees in the selection of representatives for collective bargaining. Accordingly the total number of employees in the unit is fifty-seven.

32. Included in the forty-two application cards submitted as evidence of the extent of representation are seven cards of employees who were laid off between July 24th and August 20th, 1935. No allegation or showing was made that these lay offs were improper or that the statements of Mr. Fainblatt to the effect that the lay offs were because of lack of work, were incorrect. These seven employees cannot be counted in computing the number of respondents' employees who designated Mr. Posner as their representative. After the cards were admitted counsel for the Board withdrew the name of Vincent Nicastro. The number of names entitled to be counted as affiliated with Local No. 149 is thus reduced to thirty-four. It thus becomes apparent that Local No. 149 represented more than a majority of respond-

ents' employees in the tailoring department. It is also proper to note that the union would also have had a majority if all of the employees working that week had been included in the unit.

33. The tailoring department employees, excluding supervisory employees, employed by the respondents constitute an appropriate unit for the purpose of collective bargaining within the meaning of Section 9 (b) of the National Labor Relations Act.

34. A majority of said employees had designated the International Ladies' Garment Workers' Union, Local No. 149, by Harry A. Posner, its manager, a labor organization as defined in the National Labor Relations Act, as their representative for the purpose of collective bargaining with respondent in respect to rates of pay, wages, hours of employment, and other conditions of employment. At all times since August 28, 1935 and September 6th, the International Ladies' Garment Workers' Union, Local No. 149, by Harry A. Posner, its manager, has been, by virtue of Section 9 (a) of said Act, the exclusive representative of all employees in such unit for the purpose of collective bargaining with the respondents in respect to rates of pay, wages, hours of employment and other conditions of employment.

35. The International Ladies' Garment Workers' Union, Local No. 149, by Harry A. Posner, its manager, has attempted on August 30th, and September 6th, 1935, to bargain collectively with respondents, as exclusive representative of respondents' tailoring department employees in respect to rates of pay, wages, hours of employment, and other conditions of employment.

36. The respondents did, on August 30, and September 6, 1935, refuse to bargain collectively with the International Ladies' Garment Workers' Union, Local No. 149, by Harry A. Posner, its manager, as exclusive representative of respondents' production employees in respect to rates of pay, wages, hours of employment and other conditions of employment.

IV

INTERSTATE COMMERCE ASPECTS OF RESPONDENTS' BUSINESS

37. In order to avoid complying with an arbitration award in favor of the union representing the employees of Lee Sportswear Co. in New York City, under the terms of its agreement with the union Benjamin Fainblatt, the father of the proprietors of that company and one of the respondents in this proceeding, and his daughter, one of the partners in Lee Sportswear Co., established the Somerville Manufacturing Company and the Somerset Manufacturing Co. in Somerville, N. J. Respondents have discontinued using the name Somerville Manufacturing Co., but under the name Somerset Manufacturing Co. they are an exclusive contractor for the Lee Sportswear Co. The raw materials used by respondents are wool textile fabrics and cotton textile fabrics. All of the raw material, converted into garments by respondents, are owned by the Lee Sportswear Co. Although the proportion varies from time to time, it is customary for the Lee Sportswear Co. to furnish the material already cut and ready for the operators to sew. If the Lee Sportswear Co. is very busy, material is sent to the respondents for cutting. Sometimes, however, the material is

shipped directly from the mills to respondents in Somerville, where it is cut. Respondents receive extra compensation for the cutting, whether the uncut material comes from the mills or from Lee Sportswear Co. Some of the mills from which respondents receive these shipments are located outside the state of New Jersey. During recent months most of the material has been cut when received by respondents. After the garments are made up they are shipped back to the Lee Sportswear Co. in New York City, although some of them are turned over to a representative of that company stationed at the Somerville plant, who may ship them directly to customers. Most of the raw materials and finished garments are handled by an expressman or trucking concern, Sissler Brothers, of Somerville, N. J. Lee Sportswear Co. pays the trucking charges. In general no stock of raw materials is maintained at the Somerville plant, although there are times when there is more work on hand than at others. The only record of incoming shipments to respondents is in the office of Lee Sportswear Co. The finished garments are shipped back to Lee Sportswear Co. in New York City, or turned over to the Lee Sportswear Co. representative at Somerville, as soon as the garments are finished. There are "constant" shipments of raw materials from New York City to Somerville and constant, but not always daily shipments of the finished garments from Somerville to New York City. The records of shipments to the Lee Sportswear Company are the only production records kept by respondents. The principal operations at respondents' plant are sewing and finishing, although occasionally some cutting is done. The garments may go through as many as

fifteen hands and are then packed and shipped. One of the "general men", Al, does most of the shipping work, including the packing for shipping, although he has been assisted at least twice by one of the floor girls, and at other times by shipping clerks sent to Somerville from New York City.

38. Counsel for the Board and for respondents stipulated that the Somerset Manufacturing Co. manufactures and converts raw materials of the Lee Sportswear Co. into a finished product for the exclusive account of the Lee Sportswear Company in New York City; and that the Lee Sportswear Company, New York City, sells and distributes for its own account the entire aforementioned converted manufactured products throughout the United States. The garments as finished by respondents do not carry any label. Sol Fainblatt, Benjamin Fainblatt's son, is employed by and acts as the Somerville agent of the Lee Sportswear Co. He goes to New York City each morning as a part of his work, gets his orders, returns to Somerville, N. J. about two o'clock in the afternoon, and ships his goods out. The goods that he ships are those turned over to him by respondents. The Lee Sportswear Co. pays in advance for the garments manufactured by respondents. This payment represents principally the labor involved in the cost of manufacture. The business of respondents is seasonal, but the plant is always kept running, even during slack months. The Lee Sportswear Co. gives work to respondents even when work is not given to other contractors.

39. In September, 1934, the Somerset Company shipped 1871 dozen finished garments. In October

and November, 1934, the total shipments of the Somerset and Somerville companies amounted to 1040 dozen and 1032 dozen. In September 1935, the shipments of the Somerset company amounted to 1214 dozen, and for the period October 1 to 14, the shipments amounted to 651 dozen. The shipments for other months were not in the record of this hearing.

In respect to the effect of the strike upon production, Mr. Fainblatt testified that, "the strike affected it that we made up less garments. If there are so many people less working so many garments less are made up." Respondents did not replace the strikers immediately, but after an indefinite period began to add new workers gradually. Not until about January 1st, 1936, was the working force as large as it had been just prior to the strike. The business of respondents is clearly of an interstate nature. Most of the raw materials used in respondents' plant are partially processed in New York City and are then sent to respondents' plant in Somerville, N. J. for further processing and finishing. The finished garments are sent back to New York City, and from there are distributed throughout the United States. The raw materials processed in, and the finished products of respondents' plant are clearly transported in interstate commerce and constitute a continuous flow of commerce among the several states. It cannot be denied that in this instance there was a labor dispute affecting commerce among the states.

40. The establishment of the respondents' plant in Somerville, N. J., to manufacture garments not permitted under the union agreement with the Lee

Sportswear Co. in New York City, was the outgrowth of a labor dispute ostensibly settled by arbitration. In this proceeding consideration is being given to another labor dispute, involving legal and moral rights, rather than contract rights. This dispute was brought on by the adoption of such devices as keeping two sets of books while operating under N. R. A. codes, one set for the code officials indicating compliance with the minimum wage provisions of the code, and one set setting forth the amount actually paid to the employees in somewhat lower figures. Other matters have already been discussed, such as the cutting of rates after the invalidation of N. R. A. codes and the accompanying establishment of irregular hours. When the employees sought to join together for their protection and in attempt to obtain more decent conditions of employment, Fainblatt learning of these efforts attempted to thwart them, by discharges and holding meetings. In this he was assisted by two leading public officials in the community. On the witness stand Fainblatt said he would quit his business before he would have an outsider running it. Mr. Fainblatt apparently did not consider this position when he invited Mayor Hess, Sheriff Adams, and Mr. Hawley to speak to his employees. During his talk with respondents' employees Mayor Hess told them that if they went on strike they would have to go on relief, apparently without considering the union objectives of stabilizing employment and raising wages, and the effect the accomplishment of these objectives would have upon the income and relief costs in the community.


The first meeting held by Mr. Fainblatt with his employees was on August 21st, 1935, the second

meeting was on August 28th, 1935. At the first meeting held on the second floor where the operators work, Mr. Fainblatt closed the doors, shut off the power, and called the girls around him, at about 4:30 in the afternoon, and introduced Mayor Hess, who then spoke to them. One witness testified as to the talk of Mayor Hess that, "He told us to stick to our boss because that is where our bread and butter was; and that we should have no connection with the union, that our boss was against the union, that if we walked out on strike, we would be on relief and it was terrible to be on relief, and he told us to bring our troubles to the boss". Mr. Hawley told of his misfortunes in belonging to a union and that "it would do no good to join a union". The next meeting was held a week later. When the girls came downstairs to the main floor to get their pay, they found that they could not get their money. Fainblatt said that there was someone he wanted to introduce to the girls. He then introduced Sheriff Adams, who told them, in the words of one of the girls, "We had a nice clean place, he said it was clean and sanitary and he don't believe that any girl made low pay in there. He said he was looking over the payroll, he did not think so, and he told us we shall have no connection with the Union because Mr. Fainblatt would never sign for a union". Mr. Fainblatt also spoke to the girls and urged them to bring their troubles to him.

41. By holding said meetings with their employees, respondents have discouraged membership in the labor organization known as International Ladies' Garment Workers' Union, Local No. 149.

42. The aforesaid unfair labor practices of re-

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spondents led to unrest and confusion among respondents' employees, and led to a labor dispute burdening and obstructing commerce and the free flow of commerce between the State of Indiana and the other states from which respondents receive raw materials and to which respondents ship ladies garments manufactured in the plant at Somerville, N. J.

CONCLUSIONS AND RECOMMENDATIONS

Upon the basis of the foregoing findings of fact, the undersigned hereby determines and concludes:

43. Respondents by discharging and refusing to employ Elizabeth Schoka, Ethel Rice, Lorraine Heitz, Angelina Matteis, Mary Geeik, Theresa Yemma, Fay Katz, and Anna Santoro, by discouraging membership in the labor organization known as International Ladies' Garment Workers' Union, Local No. 149, and by interfering with, restraining, and coercing their employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act, as set forth in the above findings of fact, has engaged in and is engaging in an unfair labor practice affecting commerce within the meaning of Section 8, subdivision 1, and Section 2, subdivision 6 and 7 of the National Labor Relations Act.

44. Respondents by discharging and refusing to employ Elizabeth Schoka, Ethel Rice, Lorraine Heitz, Angelina Matteis, Mary Geeik, Theresa Yemma, Fay Katz, and Anna Santoro, and by thus discriminating in regard to tenure of employment, and discouraging membership in a labor organization known as the International Ladies' Garment

Workers' Union, Local No. 149, as set forth in the above findings of fact, has engaged in and is engaging in an unfair labor practice affecting commerce within the meaning of Section 8, subdivision (3), and Section 2, subdivisions (C) and (7), of the National Labor Relations Act.

45. Respondents, by refusing to bargain collectively with the International Ladies' Garment Workers' Union, Local No. 149, the representative of their employees' own choosing, and by interfering with, restraining, and coercing their employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act, as set forth in the above findings of fact, have engaged in and are engaging in an unfair labor practice affecting commerce within the meaning of Section 8, subdivision (1), and Section 2, subdivisions (6) and (7) of the National Labor Relations Act.

46. Respondents, by refusing to bargain collectively with the International Ladies' Garment Workers' Union, Local No. 149, the representative designated and selected for the purpose of collective bargaining by the majority of their employees in an appropriate unit, have engaged in and are engaging in an unfair labor practice affecting commerce within the meaning of Section 8, subdivision (5), and Section 2, subdivisions (6) and (7), of the National Labor Relations Act.

Wherefore, the undersigned recommends that:

1. Respondents cease and desist from interfering with, restraining, or coercing their employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain col-

lectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

2. Respondents cease and desist from discouraging membership in any labor organization by discrimination in regard to hire or tenure of employment or any term or condition of employment.

3. Respondents cease and desist from refusing to bargain collectively with the International Ladies Garment Workers' Union, Local No. 149, by Harry A. Posner, its manager, the representative of their production employees.

4. In order to effectuate the policies of the Act, respondents take the following affirmative action:

(a) Offer to Elizabeth Schoka, Ethel Rice, Lorraine Heitz, Angelina Matteis, Mary Gecik, Theresa Yemma, Fay Katz, and Anna Santoro, immediate and full reinstatement, respectively, to their former positions without prejudice to their seniority or other rights and privileges previously enjoyed.

(b) Make whole said Elizabeth Schoka, Ethel Rice, Lorraine Heitz, Angelina Matteis, Mary Gecik, Theresa Yemma, Fay Katz, and Anna Santoro, for any losses of pay they have suffered by reason of their discharge, by payment of a sum of money equal to that which each, respectively, would normally have earned as wages, less earnings from other employment, during the period from the date of their respective discharges to the date of such offer of reinstatement. In case of a failure to agree upon the correct amount of such payment, either party may notify the Regional Director for the Second

Region of the National Labor Relations Board. Said Regional Director shall hold a hearing, at which respondents shall produce all records necessary for the said Regional Director to make a determination of the said amount due. Said Regional Director shall make such a determination, which shall be final and binding upon all parties.

(c) Post a notice in a conspicuous place readily accessible to all employees stating that respondents will not discriminate against any employee because of membership in any labor organization, such notice to be kept posted for a period of three months.

(d) Reinstate all striking employees to their former positions without discrimination, upon application by said striking employees or their representatives, and upon reinstatement proceed to bargain collectively with the International Ladies' Garment Workers' Union, Local No. 149.

(e) File with the National Labor Relations Board, on or before April 14th, 1936, a report in writing setting forth in detail the manner and form in which they have complied with the foregoing requirements.

It is further recommended that, unless on or before April 14th, 1936, the respondents notify the National Labor Relations Board in writing that they will comply with the foregoing recommendations, that said Board issue an order requiring respondents to take the action aforesaid.

Dated: April 3rd, 1936.

ROBERT M. GATES,
Trial Examiner.

**ORDER TRANSFERRING PROCEEDING TO
NATIONAL LABOR RELATIONS BOARD**

A charge having been duly filed in this case with the Regional Office for the 2d Region, and the Board deeming it necessary in order to effectuate the purposes of the National Labor Relations Act that the above entitled matter be transferred to and continued before it,

It Is Hereby Ordered, in accordance with Section 35 of Article II of the National Labor Relations Board's Rules and Regulations—Series I, that this proceeding be transferred to and continued before the Board.

By direction of the Board:

BENEDICT WOLF,
Secretary.

(Seal)

DECISION**STATEMENT OF THE CASE**

Upon an amended charge¹ duly filed by Harry A. Posner, as agent for Local No. 149, of the International Ladies' Garment Workers' Union, hereinafter referred to as Local No. 149, the Regional Director for the Second Region, on January 28, 1936, issued on behalf of the National Labor Relations Board, hereinafter referred to as the Board, a complaint against Benjamin Fainblatt,² and Margorie Fainblatt,³ individuals doing business under the firm names and styles of Somerville Manufacturing Company and Somerset Manufacturing Company, both of Somerville, New Jersey, respondents herein. The complaint alleged that the respondents had engaged in and were engaging in unfair labor practices affecting commerce within the meaning of Section 8, subdivisions (1), (3) and (5) and Section 2, subdivisions (6) and (7) of the National Labor Relations Act, approved July 5, 1935, hereinafter re-

¹ The original charge was filed on October 14, 1935. The only change made in the amended charge was to add the name of Marjorie Fainblatt as respondent.

² Also known and referred to in the charge as Benjamin Feinblatt and in the complaint as Benjamin Fainblatt.

³ Referred to in the complaint as Margaret Feinblatt or Margorie Fainblatt.

ferred to as the Act. In substance, the complaint alleged:

1. The respondents are doing business in Somerville, New Jersey, under the firm names, Somerville Manufacturing Company and Somerset Manufacturing Company, and are engaged in the manufacture, sale and distribution of Women's sportswear. In the course of this business they have caused substantial amounts of raw material and finished goods to be purchased, transported and sold in interstate commerce.

2. Between the approximate dates of August 21 and September 18, 1935, the respondents, by their officers and agents, discharged and have since refused to reemploy Elizabeth Schoka,⁴ Angelina Matteis, Lorraine Heitz, Ethel Rice, Mary Gecik, Fay Katz and Anna Santoro⁵ for the reason that they had joined and assisted a labor organization known as Local No. 149 of the International Ladies' Garment Workers' Union, such discharge and refusal constituting unfair labor practices within the meaning of Section 8, subdivisions (1) and (3) of the Act.

3. On or about September 13, 1935, the respondents refused and have since refused to bargain collectively with Local No. 149 through Harry A. Posner, its representative, although at that time the membership of Local No. 149 constituted a majority of the production employees in the respondents.

⁴ Referred to in the complaint as Elizabeth Scheka.

⁵ The original and amended charges did not include the name of Anna Santoro.

Somerville plant and although the production employees constituted a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act, such refusal constituting unfair labor practices, within the meaning of Section 8, subdivisions (1) and (5) of the Act.

The complaint and the accompanying notice of hearing were duly served on the respondents and on Local No. 149. On February 4, 1936, the respondents filed an answer which admitted that they were engaged in business in Somerville, New Jersey in the manufacture of women's sportswear, but denied that they were engaged in its "sale and distribution," or that they were engaged in interstate commerce. The answer also denied that the respondents had engaged in unfair labor practices. As to the allegations regarding the proper unit for collective bargaining, the representative capacity of Harry A. Posner, as manager of Local No. 149, the refusal to bargain collectively, and the nature of the alleged acts as constituting unfair labor practices affecting commerce, the answer denied that the respondents had knowledge or information sufficient to form a belief. Finally, the answer asserted the unconstitutionality of the Act and its inapplicability to the respondents' business.

On February 15, 1936, in accordance with Article 11, Section 35, of National Labor Relations Board Rules and Regulations—Series 1, the Board ordered the proceeding to be transferred to and continued before it.

On February 17, 18 and 19, 1936, a hearing was held in Somerville, New Jersey, before Robert M. Gates, the Trial Examiner duly designated by the Board. The respondents, appearing specially,

moved to dismiss the complaint upon the grounds that the Act was unconstitutional and that the Board, having issued the complaint, was disqualified from exercising a judicial function by conducting the hearing. The motion was denied and the respondents then took part in the hearing without waiving their right to renew their objection in due course. Full opportunity to be heard, to examine and cross-examine witnesses, to introduce evidence and to file briefs was afforded to all parties; the respondents, however, called no witnesses and introduced no evidence. During the course of the hearing counsel for the Board moved to amend the complaint to conform the pleadings to the proof. The motion was granted. Counsel for the Board also moved to amend the complaint by adding the name of Theresa Yemma to the list of employees alleged to have been discharged by the respondents. The motion was granted over the respondents' objection. The respondents then moved to have the answer conformed to the amended complaint. The motion was granted. At the close of the case for the Board, the respondents moved to dismiss the complaint on the grounds that the Act is unconstitutional and if constitutional is inapplicable to the respondents' business. The motion was denied. The rulings of the Trial Examiner on all motions are hereby affirmed.

On February 24, 1936, the Board, acting pursuant to Article II, Section 3 (a) of said Rules and Regulations—Series 1, directed the Trial Examiner to prepare and file with it his intermediate report. On April 3, 1936, the Trial Examiner filed his intermediate report finding that the respondents had engaged and were engaging in the unfair labor prac-

tices alleged in the complaint and recommending, in substance, that they cease and desist therefrom, offer to reinstate the eight discharged employees listed in the amended complaint with back pay, reinstate all striking employees, and proceed to bargain collectively with Local No. 149. The Trial Examiner further recommended that unless the respondents filed with the Board on or before April 14, 1936, a written notification that they would comply with these recommendations, the Board should issue an order requiring such compliance. No such notification of compliance has been filed by the respondents nor have they filed exceptions to the intermediate report or any other part of the record.

Upon the entire record as thus made, including the pleadings, the evidence adduced at the hearing, and the Trial Examiner's intermediate report, the Board makes the following:

FINDINGS OF FACT

I.

RESPONDENT'S BUSINESS AND ITS RELATION TO INTER-STATE COMMERCE

1. In August, 1934, the respondent Benjamin Fainblatt, (hereinafter referred to as Fainblott) established the Somerville Manufacturing Company and the Somerset Manufacturing Company in Somerville, New Jersey. Though separately registered, the companies were in fact identical, the two names having been adopted for reasons immaterial here. The respondent, Margorie Fainblatt, Benjamin Fainblatt's daughter, is registered as part owner of the Somerset Manufacturing Company, but Fain-

blatt's testimony indicates that her ownership is largely formal and that he is in fact in full control. On or about February 15, 1935, Fainblatt discontinued the use of the name Somerville Manufacturing Company.

2. The Lee Sportswear Company, New York, New York, (hereinafter called Lee Sportswear) is a partnership composed of Fainblatt's children, Margorie, Leo and Irving. Prior to August, 1934, Fainblatt had been employed by Lee Sportswear as general supervisor of its shop in New York. Following an adverse decision in the arbitration of a dispute with the union representing the employees of Lee Sportswear, Fainblatt came to Somerville and established his present business. The necessary capital was loaned to him by Lee Sportswear in return for a chattel mortgage on his machinery.

3. Counsel for the respondents stipulated with counsel for the Board that the Somerset Manufacturing Company (and prior to February, 1935, the Somerville Company) at its plant in Somerville, New Jersey, manufactures and converts raw material of Lee Sportswear into finished products for the exclusive account of Lee Sportswear, which sells and distributes these finished products for its own account throughout the United States. The products are for the most part women's sport clothing, such as snow suits, ski pants, slacks, beach wear, shorts, etc.

4. The raw material, title to which remains throughout in Lee Sportswear, is usually cut by that company in New York City and shipped to the Somerset Manufacturing Company. Sometimes the raw material is shipped at the order of Lee Sports-

wear directly from the mills, many of which are outside the State of New Jersey, to the respondents' plant and is cut there.

5. As soon as possible after the raw material is received, it is made up into finished goods. Sol Fainblott, another of Fainblott's sons, is maintained by Lee Sportswear as its representative at the Somerville plant. After the raw material is manufactured and converted by the respondents, the finished goods are delivered to Sol Fainblatt. Some he ships directly to customers of Lee Sportswear throughout the United States; the rest he ships to Lee Sportswear itself in New York City. Such shipments are made on an average of four or five times a week; no goods are stored at the factory.

6. Fainblott operates under a standing agreement with Lee Sportswear, whereby he converts and finishes according to their order whatever raw materials they send him and is paid therefor at rates varying with the type of goods produced. These contractual payments are the business' only income, Fainblatt receiving no dividends from Lee Sportswear and having technically no financial interest therein. It appears, however, that Fainblatt is the principal or only manufacturer with whom Lee Sportswear contracts. Thus he testified in describing his relationship to Lee Sportswear: "The only unusual thing is whereas they are not supplying other contractors with work, they will supply me with work. That is the relationship between father and children."

7. Though technically an independent enterprise, the Somerset Manufacturing Company thus operates in fact as the principal manufacturing de-

partment of Lee Sportswear, a company engaged in selling sporting goods in interstate commerce. The operations of the respondents require and are a part of a continuous flow of goods in such commerce between the respondents and the mills, the respondents and Lee Sportswear and the respondents and the customers of Lee Sportswear. The volume of this flow varies directly with the volume of the respondents' output.

8. The aforesaid operations of the respondents constitute a continuous flow of trade, traffic and commerce among the several States.

II.

THE APPROPRIATE UNIT

9. The employees of the Somerset Manufacturing Company fall naturally into four classes: (1) those in the tailoring department; (2) the cutters; (3) the "general" or maintenance men; and (4) the supervisory staff. The workers in the tailoring department are for the most part either machine operators or "floor girls"; i. e., girls engaged in trimming, cleaning, folding and packing the goods. In addition there is one "finisher" who comes in only occasionally to sew on snaps, hooks and eyes, etc. There are two cutters, who work irregularly on material; Fainblatt himself referred to them as constituting a separate department. The activities of the four "general" men, though not described in detail in the record, seem to consist of such tasks as tending the machines, cleaning the floor, carrying material from one machine to another, etc. though occasionally they have helped to sew on eyelets. The

supervisory staff consists of a foreman, forelady, and a bookkeeper.

10. The tailoring department of the Somerset Manufacturing Company, consisting of the operators, floor girls, and finisher, constitutes a unit appropriate for the purposes of collective bargaining.

III.

THE DESIGNATION OF LOCAL NO. 149 AS REPRESENTATIVE OF THE EMPLOYEES IN THE TAILORING DEPARTMENT

11. Local No. 149 of the International Ladies' Garment Workers' Union is a labor organization which exists for the purpose of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, and conditions of work.

12. Following the invalidation of the National Industrial Recovery Act, Fainblatt instituted a series of severe wage cuts. On August 14, 1935, three employees of the tailoring department, Ethel Rice, Anna Santoro, and Mary Morano, at the request of a number of the others, went to the office of Harry A. Posner, manager of Local No. 149, at Plainfield, New Jersey. They asked his assistance in improving wages and working conditions in the respondents' plant. While at his office the three girls filled out application cards for membership in Local No. 149. They returned to the plant and persuaded another employee, Elizabeth Schoka, to fill out a card. Then as Posner had suggested, they called a meeting of interested employees for August 21, 1935. At that meeting, attended by Posner, at least 15 girls of the tailoring department filled out

application cards for membership in Local No. 149. Thirteen more applied at a second meeting on August 28 and two others applied shortly thereafter. According to the custom of Local No. 149, these 34 employees became members of Local No. 149 for purposes of collective bargaining upon the signing of their application cards, though none of them had as yet paid union dues. As further evidence of their membership, the Union has contributed regularly to their support during the strike.

13. The eight girls of the tailoring department who are found below to have been discharged for Union activities are included in the 34, since they continued to be employees of the Somerset Manufacturing Company within the meaning of Section 2, subdivision (3) of the Act. Application cards were also filled out by one of the "general" men and by at least seven individuals who, for reasons unknown to us, had been discharged or left the employment of the Somerset Manufacturing Company before September 6, 1935. As they were not in the tailoring department, the appropriate unit for collective bargaining, they have been excluded from our calculations.

14. At either the first or second meetings of Local No. 149, Harry A. Posner, as manager of Local No. 149, was chosen by the employees present to represent them in collective bargaining with the respondents. Regardless of when that choice was formally made, it is clear from the subsequent actions of all the 34 members of Local No. 149 that they ratified that choice.

15. During the week ending September 7, 1935,

at or about which time it is alleged that the respondents refused to bargain collectively, there were on the payroll of the Somerset Manufacturing Company, 53 employees of the tailoring department. To them must be added the six employees of that department who, we find below, had up to that time been discharged for union activities since August 14, 1935. One of the six, Elizabeth Schoka, was temporarily employed at that time by the Stars Dress Shop in Plainfield, New Jersey, but her employment there lasted only four or five weeks and cannot be considered "regular" or "substantially equivalent" to her position with the Somerset Manufacturing Company, within the meaning of Section 2, subdivision (3) of the Act. The total number of employees in the unit was thus 59. The 34 members of Local No. 149 were therefore in a clear majority. These figures continued unchanged until September 18, the day of the strike.

16. On September 6, 1935, Local No. 149 of the International Ladies' Garment Workers' Union had been designated by a majority of the employees in the tailoring department of the Somerset Manufacturing Company as their representative for the purpose of collective bargaining.

IV.

THE REFUSAL TO BARGAIN COLLECTIVELY

17. On or about August 30, 1935, Posner called on Fainblott at the plant, told him that he had been delegated by his employees to present certain demands for the improvement of conditions at the plant, and outlined these demands. Fainblott replied that he would take the proposals into consid-

eration and let him know his answer in a few days. On September 6, Posner called Fainblatt on the telephone. According to Posner's testimony, Fainblatt told him that he would have no dealings with him, would have nothing to do with a union, and that he did not recognize Posner as legal representative of his employees. Fainblatt testified that he did not remember saying he would never recognize a union for collective bargaining, but admitted that he said that before he would allow an outsider to run his business he would get out of it. In reply to subsequent questions by counsel for the Board as to his willingness to deal with Local No. 149, Fainblatt refused to give a direct answer, merely repeating three times "I will not let an outsider run my business."

18. Posner reported this rebuff to the members of Local No. 149. They voted unanimously to strike at 10 A. M., September 18. All of the 34 members of Local No. 149 who had not previously been discharged struck either at the time set or within a day or two thereafter. The strike is still in progress, though the record indicates that one or two of the girls have gone back to work.

19. About two weeks after the strike began, Posner went to the office of Mr. Girofsky, Mr. Fainblatt's attorney and representative, and attempted to open negotiations for a settlement. Girofsky informed him that "Mr. Fainblatt would not talk union or recognize anybody that had any connection with the union." At some subsequent date, Mr. Posner, his attorney, Mr. Feller, Mr. Girofsky, Mr. Fainblatt, and Mr. Moscovitz, Regional Attorney for the second Region, met and discussed terms of

settlement. Though the record is not clear, the meeting appears to have been fruitless.

20. On or about September 6, 1935, the respondents refused and have since continued to refuse to bargain collectively with Local No. 149, through Harry A. Posner, as representative of the employees in the tailoring department of the Somerset Manufacturing Company.

21. The strike of certain of the respondents' employees on September 18, 1935, resulted directly from the respondents' refusal to bargain collectively.

VI.

DISCRIMINATORY DISCHARGES

22. It is alleged that between August 14 and September 18, 1935, the respondents discharged and have since refused to reinstate the following employees because of their union activities:

(a) Elizabeth Schoka had been employed as an operator by the Somerset Manufacturing Company since August, 1934, save for a brief interval when she had been temporarily laid off because of lack of work. For a while she had been classed as a "learner," but for some months before her discharge she had been classed as a regular operator and accordingly had been paid at piece rates. Since the invalidation of the National Industrial Recovery Act she had averaged from \$9.00 to \$12.00 a week. There is no evidence that she had been inefficient or below standard in any way. On August 14, 1935, she met the three girls returning from their visit to Mr. Posner, and filled out an application card for

union membership. Shortly before or after this date, Fainblatt called her to his office and asked her "Who approached you to sign the union—Frank or his wife?"⁶ She replied "Nobody." A few days later, she was told by the foreman, "You are causing too much trouble. Get your work and go home." She went home at once. Since that time she has worked for four or five weeks for the Stars Dress Shop in Plainfield, New Jersey, at \$17.00 a week.

(b) Lorraine Heitz began working for the Somerset Manufacturing Company as a floor girl in April, 1935, and was employed continuously until the time of her discharge. There is no evidence that she was inefficient in any way. Since the invalidation of the National Industrial Recovery Act she had been paid 21 cents an hour. Two weeks before her discharge this rate was cut without notice to 18 cents an hour. Her hours were irregular, averaging between thirty to thirty-five hours a week. She had taken some leadership in inviting girls to the first meeting of Local No. 149. Shortly before the meeting the foreman asked her if she was interested in Local No. 149 and for information about it. She had replied she had no information to give him. On the afternoon of August 21 she was quite busy and worked overtime. Before leaving she and Ethel Rice, as was customary, asked Fainblatt what time they were to come in next morning. He replied, "I am sorry, girls, there is no work for you." They

⁶ The identity of "Frank" is not made clear in the record.

⁷ Also known and listed on the payrolls as Lorraine Vones.

asked him why and he replied, "I have no more work for you girls, you will have to go to the union." Both girls testified that at that time there was an exceptionally large amount of work to do. The next morning they returned to get their pay and asked Mr. Fainblott again for work. He replied that he had told them once before that he had no work for them and opening the door of the first floor where the floor girls usually worked showed that there was no one there. On their way in, however, they had already seen the other floor girls waving to them from the windows of the third floor. Since her discharge Lorraine Heitz has not obtained employment elsewhere.

(c) Ethel Rice began working as a floor girl for the Somerset Manufacturing Company in January, 1935, and was employed continuously until her discharge. There is no evidence that she was in any way inefficient. Since the wage cut following the invalidation of the National Industrial Recovery Act, she had been paid 25 cents an hour. Her hours were irregular, her weekly pay ranging from \$6 to \$10 a week. She was one of the three girls who visited Posner on August 14 and asked his help in forming a union. She was active in trying to interest girls in Local No. 149 and in inviting girls to the first meeting. Her account of the discharge of Lorraine Heitz and herself on the afternoon of August 21, 1935, tallies with that given by Lorraine Heitz in all essentials, including the facts of their overtime work, the use by Fainblatt of substantially the language, "I have no more work for you girls—you can go to the Union for work," and the effort of Fainblatt to convince them that there was no work by showing them the empty first floor while

the other floor girls were upstairs. The record does not reveal whether or not she has worked elsewhere since her discharge.

(d) Angelina Matteis began work as an operator for the Somerset Manufacturing Company about a year before her discharge. Save for a few lay-offs of a half a day or so in slack seasons, she was employed continuously the entire year. There is no evidence that she was inefficient in any way. She worked at piece rates averaging from \$8 to \$12 a week. She had been active in inviting the girls to the first meeting of Local No. 149. At that first meeting she joined. A few days later, when she reported for work in the morning, she was told by the foreman "I am sorry you are causing too much trouble. I have no more work for you." She went home at once. Since that time she has worked for one week at a shop in Plainfield, receiving \$14.

(e) Mary Gecik began work as an operator at the Somerset Manufacturing Company in March, 1935, and was employed continuously until her discharge. There is no testimony that she was in any way inefficient. After the wage cut that followed the invalidation of the National Industrial Recovery Act she averaged at piece rates from \$7 to \$8 a week. She joined Local No. 149 at its first meeting, on August 21. A few days thereafter, when she went to work in the morning, she was told by the foreman, "I have not any more work for you. You are causing too much trouble. If you want work go to the Union. The Union will give you work." She left at once. She has not been employed since her discharge.

(f) Fay Katz began working as an operator with the Somerset Manufacturing Company in Decem-

ber, 1934, and was employed continuously until her discharge. There is no evidence that she was in any way inefficient. She was paid at piece rates. Her hours varied from 14 to 40 hours a week during the last five weeks of her employment. When she worked 40 hours her pay averaged \$7 or \$8 a week. She was active in talking to the girls about Local No. 149 and in inviting girls to its meetings, and joined on August 21. The forelady had spoken to her concerning Local No. 149 at about the time of this first meeting. When she reported to work a few days before the strike, Fainblott refused to allow her into the plant, saying: "I have no work for you." When she said he had given other girls work, he replied: "I don't owe you anything. If you want work you can go to the Union." Since that time she has worked four and one-half days at a shop in Plainfield, receiving a little over \$15.

(g) Anna Santoro was employed as an operator by the Somerset Manufacturing Company from the time it opened until her discharge. According to her uncontradicted testimony she was one of the fastest and highest paid of the operators. Since the invalidation of the National Industrial Recovery Act she had been paid at piece rates between \$8 and \$9 a week. She was one of the three girls who visited Mr. Posner at his office in Plainfield, and had attended all the union meetings of Local No. 149. On the morning of the strike, September 18, the forelady, after first speaking to a girl who worked beside her and then to the foreman, came over to her, said to her "no more work for you." She also told her that she had heard that she was the one that was going to blow the whistle to call the girls out on strike and that she was the one that had

started all the trouble by going to Mr. Posner. She left at once, fifteen minutes before the strike was called.

(h) Theresa Yemma was employed by the Somerset Manufacturing Company from April, 1935, to the time of her discharge. She worked some of that time as a floor girl and the rest as an operator. There is no evidence that she was in any way inefficient. There is no information in the record as to the rate of her pay after the invalidation of the National Industrial Recovery Act. She joined Local No. 149 on August 21 at its first meeting. During the following week, though she reported regularly for work, she was given nothing to do by the foreman, though there was much to do at which she was experienced. Finally, the day after the second meeting of Local No. 149, when she went for her pay, the foreman told her he had no work for her, that she had been causing too much trouble. She left at once. According to her uncontradicted testimony, she had never been disciplined or reprimanded during her previous employment by the company. Since her discharge she has worked from the middle of September to the end of December at another plant at an average pay of \$13 a week. She also worked for the M. H. Fishman Department Store on each Saturday during October, November and December, at 21 cents an hour, usually for 10 hours a day.

23. The respondents insisted at the hearing that these eight girls had not been discharged but had been temporarily laid off because of lack of work. Discrimination through the laying off of employees active in union organization is as clearly within the prohibition of Section 8, subdivision (3), of the Act, as is their discharge. In any event, we cannot ac-

cept the respondents' explanation that the girls were laid off. Fainblott himself testified that one of his busy seasons began in August or September. Previous lay-offs due to lack of work had usually lasted not more than a few days and the longest mentioned in the record was from the middle of December to "sometime after the New Year." Fainblatt himself customarily notified girls who had been laid off when to return. He testified that he has taken on new employees to replace both the girls on strike and the eight allegedly discharged, and there is no evidence in the record that he sent any such notification to the eight girls in question. All eight had joined Local No. 149, either at or before its first meeting; several had helped to organize that meeting; two had visited Mr. Posner and asked his aid. The supervisory staff evidently suspected or knew of these activities, as their questions to some of the eight reveal. Upon being discharged, all eight were told either that they were causing trouble or that they should "go to the union for work."

24. The record contains further evidence of Fainblott's deep hostility to Local No. 149 and his determination to thwart any effort to organize his plant. Fainblatt testified that before the first meeting of Local No. 149 he learned from certain girls in the plant that an effort to organize the employees was being made. On the afternoon of August 21, the day set for the first meeting, Fainblatt invited Mayor Hess of Somerville and a Mr. Hawley, from whom he had rented the plant, to speak to the girls. He insured the full attendance of the machine operators by closing the doors of the second floor where they worked, turning the power off, and tell-

ing them to gather around. The Mayor then addressed them, telling them, in substance, to have no connection with Local No. 149, but to stick to the boss where their bread and butter came from, and warning them that their boss would have nothing to do with Local No. 149, and that if they went on strike they would have to go on relief. Mr. Hawley recounted his own experience as a member of a union which had struck unsuccessfully, and advised the girls against joining.

25. On August 28, the afternoon before the second meeting of Local No. 149, Fainblatt invited Sheriff Adams of Somerset County to the plant. When the girls came downstairs to get their pay, Fainblatt closed the doors and refused to allow anyone to be paid until they were all gathered together. Sheriff Adams then spoke advising the girls against joining Local No. 149 because Fainblatt would never sign an agreement with a union.

26. Several employees testified to the substance of these addresses. Fainblatt testified that in none of them was a union mentioned, but that the speakers merely asked the girls not to make trouble for a peaceful factory. When pressed, however, he admitted that he had heard of Local No. 149 and of a possible strike, and said he "presumed" the speakers came to discuss the threatened strike. As against the testimony of the employees, and in the light of his admitted knowledge of the plans for a union, we find his assertion that the strike and "trouble" were discussed without mention of the union to be unworthy of credence.

27. In the light of the language used in connec-

tion with the discharges and of all the attendant circumstances, we find that the respondents, or their agents, by discharging the eight girls named in the amended complaint for the reason that they joined and assisted Local No. 149, discriminated against them in regard to hire and tenure of employment, thereby discouraging membership in a labor organization. We also find that by such discharges, the respondents interfered with, restrained and coerced their employees in the exercise of the rights guaranteed in Section 7 of the Act.

28. It is clear from the record that the discharged girls have not applied individually to the respondents for reinstatement. It is equally clear that their reinstatement was among the terms offered by Posner to the respondents in his effort to settle the strike, and was rejected by them when they refused to bargain collectively. Two weeks before the hearing Fainblatt offered through Commissioner of Conciliation Moffet of the United States Department of Labor to re-employ seven workers at once and the balance as he could absorb them, but according to Posner, the terms included the dropping of union affiliations. Fainblatt himself said that he would employ workers individually, but not "as a body." In view of Fainblatt's attitude toward the union and toward collective bargaining, it is evident that he conditioned reinstatement upon the abandonment by the girls of the rights guaranteed in Section 7 of the Act. Such a condition can only be treated as a refusal to reinstate.

VII.

THE EFFECT UPON COMMERCE

29. Between September 1 and 17, 1934, approximately 1065 dozen finished garments were shipped from the respondent's plant. From September 18 to 30, 1934, approximately 987 dozen garments were shipped. Though the record is incomplete as to the shipments in October, 1934, it is clear that at least 1011 dozen were shipped. The shipments from September 1 to 17, 1935, totaled approximately 857 dozen. The strike in this case began on September 18, 1935. The shipments from September 18 to 30, 1935, totaled approximately 373 dozen. In October, 1935, the record reveals that there were at least 680 dozen shipped, although there may have been more. Thus, while in September, 1935, before the strike, the plant's output was about 80 per cent of the figure for the same period in 1934; after the strike its output dropped to less than 38 per cent of that during the same period in 1934. Though the record is not clear, it seems probable that the former level of production was not regained during October.

30. The aforesaid acts of the respondents have led and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

VIII.

THE REMEDY

31. That the eight discharged girls and those who struck on September 18, 1935, are now without employment (except for one or two who may have

returned) is a direct result of the unfair labor practices in which the respondents are found to have engaged. To repair the damage done and return the parties as nearly as possible to the status quo ante these employees must be reinstated and the eight discharged for union activity must receive, in addition, back pay. The record indicates that since September 18, 1935, the discharged or striking employees have been replaced by others. It also indicates that the respondents' activities are seasonal and that the number they can maintain in employment varies. We will order, therefore, that the respondents offer to reinstate the eight discharged employees with back pay and also that they offer to reinstate all striking employees whose positions have been filled by others employed since September 18, 1935. The remaining striking employees must be placed on a preferential list and offered employment according to their seniority in the respondents' employ as work for them becomes available. Without such reinstatement, our order that the respondents bargain collectively with Local No. 149 would be meaningless and futile and the purpose of the Act could not be effectuated.

CONCLUSIONS OF LAW

Upon the basis of the foregoing findings of fact and upon the entire record in the proceeding, the Board finds and concludes as a matter of law:

1. Margorie Fainblott, as registered part owner of the Somerset Manufacturing Company, is properly a respondent in this proceeding, together with the actual owner, Benjamin Fainblott.
2. Local No. 149 of the International Ladies'

Garment Workers' Union is a labor organization, within the meaning of Section 2, subdivision (5) of the Act.

3. The tailoring department of the Somerset Manufacturing Company is a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9(b) of the Act.

4. By virtue of Section 9(a) of the Act, Local No. 149 of the International Ladies' Garment Workers' Union, having been designated on or before September 6, 1935 by a majority of the employees of the Tailoring department of the Somerset Manufacturing Company as their representative for the purposes of collective bargaining, has been at all times since said date the exclusive representative of all said employees for the purposes of collective bargaining.

5. By refusing and continuing to refuse to bargain collectively with Local No. 149 of the International Ladies' Garment Workers' Union as the exclusive representative of the employees in the tailoring department of their plant, the respondents have engaged in and are engaging in unfair labor practices, within the meaning of Section 8, subdivision (5) of the Act.

6. By discriminating in regard to hire and tenure of employment against Elizabeth Schoka, Lorraine Heitz, Ethel Rice, Angelina Matteis, Mary Gecik, Fay Katz, Anna Santoro and Theresa Yemma, thereby discouraging membership in Local No. 149 of the International Ladies' Garment Workers' Union, the respondents have engaged in and are

engaging in unfair labor practices, within the meaning of Section 8, subdivision (3) of the Act.

7. By refusing and continuing to refuse to bargain collectively with Local No. 149 as aforesaid and by discriminating in regard to hire and tenure of employment as aforesaid, thereby interfering with, restraining, and coercing their employees in the exercise of the rights guaranteed in Section 7 of the Act, the respondents have engaged in and are engaging in unfair labor practices, within the meaning of Section 8, subdivision (1) of the Act.

8. The aforesaid unfair labor practices are unfair labor practices affecting commerce, within the meaning of Section 2, subdivisions (6) and (7) of the Act.

Order

On the basis of the foregoing findings of fact and conclusions of law and pursuant to Section 10, subdivision (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondents, Benjamin Fainblatt and Margorie Fainblatt, individuals doing business under the firm names and styles of Somerville Manufacturing Company and Somerset Manufacturing Company, shall:

1. Cease and desist from:

(a) In any manner interfering with, restraining, or coercing their employees in the exercise of their right to join and assist Local No. 149 of the International Ladies' Garment Workers' Union or any other labor organization;

(b) Discouraging membership in Local No. 149 of the International Ladies' Garment Workers' Union, or in any other labor organization of

their employees by discharging, refusing to reinstate, or otherwise discriminating in regard to tenure or terms of employment against employees who have joined or assisted Local No. 149 or any other labor organization of their employees;

(c) Refusing to bargain collectively with Local No. 149 of the International Ladies' Garment Workers' Union as the exclusive representative of the employees in the tailoring department of the Somerset Manufacturing Company.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain collectively with Local No. 149 of the International Ladies' Garment Workers' Union as the exclusive representative of its employees in the tailoring department in respect to rates of pay, wages, hours of employment and other conditions of employment.

(b) Offer to Elizabeth Schoka, Lorraine Heitz, Ethel Rice, Angelina Matteis, Mary Gecik, Fay Katz, Anna Santoro and Theresa Yenma immediate and full reinstatement to their former positions without prejudice to any rights and privileges previously enjoyed.

(c) Offer employment to all employees of the tailoring department who went on strike on September 18, 1935, or within one week thereafter where positions held by such employees on September 18, 1935 are now held by persons who were not employees of the respondents on September 18, 1935, but were employed subsequently thereto, and place all other employees who struck on September 18, 1935, or within the following week on a preferential list to be offered employment according to their seniority

in respondents' employment, as and when their labor is needed.

(d) Make whole said Elizabeth Schoka, Lorraine Heitz, Ethel Rice, Angelina Matteis, Mary Geeik, Fay Katz, Anna Santoro and Theresa Yemma for any loss of pay they have suffered by reason of their discharge by payment to each of them, respectively, of a sum of money equal to that which she would normally have earned as wages during the period from the date of her discharge to the date of such offer of reinstatement, less earnings from other employment during such period.

(e) Post notices in conspicuous places in the plant stating (1) that the respondents will cease and desist in the manner aforesaid, and (2) that such notices will remain posted for a period of thirty (30) consecutive days.

Signed at Washington, D. C., this 3rd day of June, 1936.

J. WARREN MADDEN,
Chairman.

JOHN M. CARMODY,
Member

EDWIN S. SMITH,
Member.

(SEAL) *National Labor Relations Board.*

Affidavit as to Service

District of Columbia, ss:

I, Kenneth Ayres, being first duly sworn, on oath saith that I am one of the employees of the National Labor Relations Board, in the office of said Board in Washington, D. C., that on the 3rd day of June, 1936; I mailed postpaid, bearing Government

frank, by registered mail, a copy of the Decision to the following named persons, addressed to them at the following addressees:

Leon Girofsky, Esquire,
Central Building,
Somerville, New Jersey.
Alexander Feller, Esquire,
Schenck Bldg.,
41-43 Paterson Street,
New Brunswick, N. J.

(S.) KENNETH AYRES.

Subscribed and sworn to before me this 3rd day of June, 1936.

(Seal)

HAROLD G. WILSON,
Notary Public.

My commission expires 5-15-41.

RETURN RECEIPT

Registered Article No. 830470

Received from the Postmaster the Registered or Insured Article, the original number of which appears on the face of this Card.

Leon Gerofsky

(Signature or name of addressee)

E. B. Hanna

(Signature of addressee's agent)

Date of delivery June 5, 1936

Form 3811

RETURN RECEIPT

Registered Article No. 830471

Received from the Postmaster the Registered or Insured Article, the original number of which appears on the face of this Card.

Alexander Feller

(Signature or name of addressee)

Anna Ruh

(Signature of addressee's agent)

Date of delivery 4 June, 1936

Form 3811

CERTIFICATE OF NATIONAL LABOR RELATIONS BOARD

The National Labor Relations Board, by its Secretary duly authorized by Section 1 of Article VI of the Rules and Regulations of the National Labor Relations Board—Series 1, as amended, effective the 28th day of April, 1936, does hereby certify that the documents annexed hereto constitute a full and accurate transcript of the entire record in a proceeding before said Board entitled "In the Matter of Benjamin Fainblatt and Margorie Fainblatt, individuals, doing business under the firm names and styles of Somerville Manufacturing Company and Somerset Manufacturing Company and International Ladies' Garment Workers' Union, Local No. 149," the same being Case No. C-53 before said Board, said transcript including the pleadings, testimony, and evidence upon which the Order of the Board in said proceeding was entered and including also the findings and order of the Board.

Fully enumerated, said documents attached hereto are as follows:

1. Copy of charge made by International Ladies' Garment Workers' Union, Local No. 149, dated October 14, 1935.

2. Copy of amended charge made by International Ladies' Garment Workers' Union, Local No. 149, filed with the Board January 27, 1936.

3. Copy of Complaint and Notice of Hearing issued by National Labor Relations Board on January 28, 1936.

4. Copy of Answer of Respondents, filed February 4, 1936.

5. Copy of Order of the National Labor Relations Board designating Robert M. Gates Trial Examiner, issued February 14, 1936.

6. Copy of Order of the National Labor Relations Board Transferring Proceeding to the National Labor Relations Board, issued February 15, 1936.

7. Copy of Order of the National Labor Relations Board directing the Trial Examiner to prepare and file an Intermediate Report, issued February 21, 1936.

8. Documents listed hereinabove, under items 1-5, inclusive, are contained in Board's Exhibit 1 included under the following item:

Stenographic Reports of Hearing before Robert M. Gates, Trial Examiner for the National Labor Relations Board, on February 17, 18 and 19, 1936, including all exhibits or copies thereof introduced in evidence.

9. Copy of Intermediate Report of the Trial Examiner filed with the National Labor Relations Board, April 3, 1936, together with affidavit of service and United States Post Office return receipt therefor.

10. Copy of Decision—Findings of Fact, Conclusions of Law and Order of the National Labor Relations Board—dated June 3, 1936, together with affidavit of service and United States Post Office return receipt therefor.

IN TESTIMONY WHEREOF, the Secretary of the National Labor Relations Board, being thereunto duly authorized as aforesaid, has hereunto set his hand and affixed the seal of the National Labor Relations Board in the City of Washington, District of Columbia, this 17th day of June, 1937.

BENEDICT WOLF,

Secretary

*National Labor Relations
Board.*

(Seal)

*Petition for Enforcement of
Order of N. L. R. Board*

In the
**UNITED STATES CIRCUIT COURT
OF APPEALS**

For the Third Circuit
National Labor Relations Board,
Petitioner,

v.

Benjamin Fainblatt and Margorie Fainblatt, Indi-
viduals, doing business under the firm names and
styles of Somerville Manufacturing Company, and
Somerset Manufacturing Company,
Respondents.

March Term, 1937.

**PETITION FOR THE ENFORCEMENT OF AN
ORDER OF THE NATIONAL LABOR
RELATIONS BOARD**

*To the Honorable, the Judges of the United States
Circuit Court of Appeals for the Third Circuit.*

The National Labor Relations Board (hereinafter referred to as the Board), pursuant to the authority conferred upon it by the provisions of an Act of Congress approved July 5, 1935 (Public No. 198, 74th Congress, 49 Stat. 449, C. 372, 29 U. S. C. A. Sec 151 et seq.), known as the National Labor Relations Act, respectfully petitions this Honorable

Court for the enforcement of a certain order issued by said Board in a proceeding instituted by it against respondent, Benjamin Fainblatt and Margorie Fainblatt, individuals doing business under the firm names and styles of Somerville Manufacturing Company and Somerset Manufacturing Company. Said proceeding is known upon the records of the Board as Case No. C-53, the title thereof being "In the Matter of Benjamin Fainblatt and Margorie Fainblatt, Individuals, doing business under the firm names and styles of Somerville Manufacturing Company and Somerset Manufacturing Company and International Ladies' Garment Workers' Union, Local No. 149".

In support of this petition, the Board respectfully shows:

(1) Respondents are and at all times herein mentioned were residents of and have and maintain an office and place of business and transact business in Somerville, in the State of New Jersey.

(2) By reason of the matters alleged in paragraph (1) hereof, this Court has jurisdiction of this petition by virtue of Section 10 (c) of said National Labor Relations Act.

(3) On the 28th day of January, 1936, a charge having theretofore been duly filed with the Board by International Ladies' Garment Workers' Union, Local No. 149, the Board issued its complaint in said proceeding No. C-53, charging that the respondents had engaged in certain unfair labor practices affecting commerce within the meaning of the National Labor Relations Act, which said complaint, together with a notice of hearing thereon, was, on the 28th day of January, 1936, duly served upon respondents,

said hearing having been noticed for the 17th day of February, 1936. Thereafter, on the 4th day of February, 1936, the respondents duly filed their answer.

(4) Thereafter, on the 14th day of February, 1936, the Board made an order designating Robert M. Gates as Trial Examiner. Thereafter, on the 15th day of February, 1936, the Board, in order to effectuate the purposes of the National Labor Relations Act, and in accordance with Section 35, Article II, of the National Labor Relations Board Rules and Regulations—Series 1, as amended, ordered that this proceeding be transferred and continued before it, the Board.

(5) Thereafter, on the 17th, 18th and 19th days of February, 1936, the Board by said Trial Examiner duly held hearings upon the charges stated in said complaint, pursuant to due notice thereof. At said hearings, testimony and other evidence with respect to the charges stated in said complaint were adduced by the Board. At said hearings, the respondent, appearing specially, moved to dismiss the complaint. The motion was denied and the respondents then took part in the hearing without waiving their privilege to renew their objection in due course. Full opportunity to be heard, to examine and cross-examine witnesses, to introduce evidence and to file briefs was afforded to all parties. The respondents called no witnesses and introduced no evidence. The Board, however, adduced testimony and other evidence with respect to the charges stated in said complaint. During the hearing, counsel for the Board moved to amend the complaint to conform the pleadings to the proof. The motion was

granted. Counsel for the Board moved also to amend the complaint by adding the name of Theresa Yemma to the list of employees alleged to have been discharged by respondents. The motion was granted over respondents' objection. The respondents then moved to have the answer conformed to the amended complaint. The motion was granted. At the close of the Board's case respondents again moved to dismiss the complaint. The motion was denied.

(6) Thereafter, on the 21st day of February, 1936, the Board made an order directing said Trial Examiner to prepare and file his intermediate report, except that such report be filed with the Board, a copy of which was, on the 24th day of February, 1936, sent postpaid, bearing government frank, by registered mail, to respondents' attorney in Somerville, New Jersey.

(7) Thereafter, on the 3rd day of April, 1936, said Trial Examiner filed with the Board an intermediate report containing findings of fact and recommendations, which recommended that the Board issue an order of compliance unless respondents, on or before the 14th day of April, 1936, notified the Board in writing that they would comply with said Trial Examiner's recommendations.

(8) Thereafter, on the 3rd day of April, 1936, a copy of said Intermediate Report was mailed, postpaid, bearing government frank, by registered mail, to respondents' counsel in Somerville, New Jersey.

(9) Thereafter, on the 3rd day of June, 1936, the respondents having failed to comply with the recommendations of said Trial Examiner or to file

with the Board its exceptions to said Intermediate Report; and the Board, having duly considered the matter and being sufficiently advised in the premises and being of the opinion, upon all the testimony and the evidence, that the respondents had been and then were engaged in certain unfair labor practices affecting commerce within the meaning of said National Labor Relations Act, duly stated its findings of fact and issued and entered the following order directed to respondents:

“ORDER

On the basis of the foregoing findings of fact and conclusions of law and pursuant to Section 10, subdivision (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondents, Benjamin Fainblatt and Margorie Fainblatt, individuals doing business under the firm names and styles of Somerville Manufacturing Company and Somerset Manufacturing Company, shall:

1. Cease and desist from:

“(a) In any manner interfering with, restraining, or coercing their employees in the exercise of their right to join and assist Local No. 149 of the International Ladies' Garment Workers' Union or any other labor organization:

(b) Discouraging membership in Local No. 149 of the International Ladies' Garment Workers' Union, or in any other labor organization of their employees by discharging, refusing to

reinstate, or otherwise discriminating in regard to tenure or terms of employment against employees who have joined or assisted Local No. 149 or any other labor organization of their employees;

(c) Refusing to bargain collectively with Local No. 149 of the International Ladies' Garment Workers' Union as the exclusive representative of the employees in the tailoring department of the Somerset Manufacturing Company.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain collectively with Local No. 149 of the International Ladies' Garment Workers' Union as the exclusive representative of its employees in the tailoring department in respect to rates of pay, wages, hours of employment and other conditions of employment.

(b) Offer to Elizabeth Schoka, Lorraine Heitz, Ethel Rice, Angelina Matteis, Mary Geeik, Fay Katz, Anna Santoro and Theresa Yemma immediate and full reinstatement to their former positions without prejudice to any rights and privileges previously enjoyed.

(c) Offer employment to all employees of the tailoring department who went on strike on September 18, 1935 or within one week thereafter where positions held by such employees on September 18, 1935 are now held by persons who were not employees of the respondents on September 18, 1935 but were employed subse-

*Petition for Enforcement of
Order of N. L. R. Board*

quently thereto, and place all other employees who struck on September 18, 1935 or within the following week on a preferential list to be offered employment according to their seniority in respondents' employment, as and when their labor is needed.

(d) Make whole said Elizabeth Schoka, Lorraine Heitz, Ethel Rice, Angelina Matteis, Mary Gecik, Fay Katz, Anna Santoro and Theresa Yemma for any loss of pay they have suffered by reason of their discharge by payment to each of them, respectively, of a sum of money equal to that which she would normally have earned as wages during the period from the date of her discharge to the date of such offer of reinstatement, less earnings from other employment during such period.

(e) * Post notices in conspicuous places in the plant stating (1) that the respondents will cease and desist in the manner aforesaid, and (2) that such notices will remain posted for a period of thirty (30) consecutive days."

(10) Said order is, and at all times since its issuance, has been in full force and effect.

(11) Thereafter, on said 3rd day of June, 1936, said order was served upon respondents by sending a copy thereof postpaid, bearing government frank, by registered mail, to respondents' attorney in Somerville, New Jersey.

(12) Respondents have failed to comply with said order of the Board heretofore set forth in paragraph (9) hereof and have failed to indicate any intention to comply therewith and the Board accord-

ingly alleges that respondents will not comply therewith unless and until required so to do by this Court.

Wherefore, the Board petitions this Honorable Court for the enforcement of its order of the 3rd day of June, 1936, and pursuant to Section 10 (e) of said National Labor Relations Act, is certifying and filing with this Court a transcript of the entire record in the proceedings before the Board, including the pleadings, testimony and evidence, findings of fact and said order of the Board.

The Board prays this Honorable Court that it cause notice of the filing of this petition and transcript to be served upon respondents and that this Court take jurisdiction of the proceedings and of the questions determined therein; and make and enter upon the pleadings, testimony and evidence and the proceedings set forth in the transcript and upon the order made thereupon, a decree enforcing in whole said order of the Board and requiring, respondents, its agents and representatives to comply therewith.

J. WARREN MADDEN,

Chairman,

EDWIN S. SMITH,

Member,

DONALD WAKEFIELD SMITH,

Member,

*National Labor Relations
Board.*

Dated at Washington, D. C., this 17 day of June, 1937.

CHARLES FAHY,

General Counsel,

National Labor Relations Board.

AFFIDAVIT

District of Columbia: ss

J. Warren Madden, Edwin S. Smith and Donald Wakefield Smith, being first duly sworn, state that they constitute the National Labor Relations Board; that they have read the foregoing petition subscribed by them and have knowledge of the contents thereof; and they further on oath state that the statements made in the foregoing petition are true to the best of their knowledge and belief.

J. WARREN MADDEN

EDWIN S. SMITH

DONALD WAKEFIELD SMITH

Subscribed and sworn to this 17th day of June,
1937, before me,

JOHN E. LAWYER,

(Seal)

Notary Public.

My commission expires September 8, 1939.

STIPULATIONS OF COUNCIL AS TO RECORD

It is hereby stipulated and agreed by and between the attorneys in the above-entitled case that the printed record in said case consist of the following:

1. The transcript of testimony as certified to the Court by the National Labor Relations Board in the matter before it known as Case No. C-53.

2. Documents included in Board's Exhibit 1 as follows: Complaint, Notice of Hearing, Respondents' Answer and Order Designating Trial Examiner.

It is further stipulated and agreed that none of the exhibits need be printed except those described above and included in Board's Exhibit 1, but shall be considered along with and part of the record, with the privilege reserved to either of the parties to have any of the exhibits printed and included in the printed record in the event that appeal is later taken.

Dated at Washington, D. C., this 25th day of June, 1937.

CHARLES FAHY,

General Counsel,

*National Labor Relations
Board.*

Dated at New York, N. Y., this 28th day of June 1937.

DAVID O. MOSCOWITZ,

Attorney,

*National Labor Relations
Board, Second Region.*

*Stipulations of Council as to
Record*

Dated at Somerville, N. J., this 30th day of June,
1937.

LEON GEROFISKY,
Respondents' Attorney.

It is hereby stipulated and agreed by and between the above named parties, through their respective attorneys, that the decision, findings of fact, conclusions of law, and order of the National Labor Relations Board be included in the printed record, in addition to the transcript of testimony and documents listed in a stipulation previously executed.

Dated at Washington, D. C., this 20th day of July,
1937.

ROBERT B. WATTS,
*Associate General Counsel,
National Labor Relations
Board.*

Dated at Somerville, N. J., this 22nd day of July,
1937.

LEON GEROFISKY,
Respondents' Attorney.

ORDER AS TO PRINTED RECORD

Upon stipulation by and between the attorneys in the above-entitled case and due consideration having been given, it is ordered that the printed record in said case consist of the following:

1. The entire record as certified to the Court by the National Labor Relations Board in the matter before it known as Case No. C-53, including the transcript of testimony and the Board's Decision.

2. Documents included in Board's Exhibit 1 as follows: Complaint, Notice of Hearing, Respondents' Answer and Order Designating Trial Examiner.

And it is further ordered that none of the exhibits need be printed except those described above and included in Board's Exhibit 1, but shall be considered along with and part of the record, with the privilege reserved to either of the parties to have any of the exhibits printed and included in the printed record in the event that appeal is later taken.

By the Court,

J. W. THOMPSON,

*Judge of the United States
Circuit Court of Appeals,
for the Third Circuit.*

Dated: Philadelphia, Pa., this 27th day of July,
1937.



UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 6490. March Term, 1938

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

BENJAMIN FAINBLATT, ET AL., DOING BUSINESS AS SOMERVILLE MFG.
Co., ETC., RESPONDENTS

Appeal from the National Labor Relations Board

And now, to-wit, this 17th day of March A. D. 1938, it is ordered that Hon. Oliver B. Dickinson, District Judge, for the Eastern District of Pennsylvania, and Hon. District Judge, for the District of be, and he is hereby assigned to sit in above case in order to make a full court.

JOSEPH BUFFINGTON,
Senior Circuit Judge.

Order Assigning Hon. Oliver B. Dickinson for Argument. Received & Filed Mar. 17, 1938. Wm. P. Rowland, Clerk.

In the United States Circuit Court of Appeals for the Third Circuit

No. 6490. October Term, 1937

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

BENJAMIN FAINBLATT AND MARGORIE FAINBLATT, INDIVIDUALS, DOING BUSINESS UNDER THE FIRM NAMES AND STYLES OF SOMERVILLE MANUFACTURING COMPANY AND SOMERSET MANUFACTURING COMPANY, RESPONDENTS

And afterwards, to wit, the 17th day of March 1938, come the parties aforesaid by their counsel aforesaid, and this case being called for argument sur pleadings and briefs, before the Honorable Joseph Buffington and Honorable John Biggs, Jr., Circuit Judges, and Honorable Oliver B. Dickinson, District Judge, and the Court not being fully advised in the premises, takes further time for the consideration thereof,

And afterwards, to wit, on the 28th day of July 1938, come the parties aforesaid by their counsel aforesaid, and the Court, now being fully advised in the premises, renders the following decision:

No. 6490. March Term, 1938

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

BENJAMIN FAINBLATT AND MARJORIE FAINBLATT, INDIVIDUALS, DOING
BUSINESS UNDER THE FIRM NAMES AND STYLES OF SOMERVILLE MAN-
UFACTURING COMPANY AND SOMERSET MANUFACTURING COMPANY,
RESPONDENTS

On Petition for the Enforcement of an Order of the National Labor
Relations Board

Opinion

Filed July 28, 1938

Before BUFFINGTON and BIGGS, Circuit Judges, and DICKINSON,
District Judge

BUFFINGTON, J.

In this case—a petition by the National Labor Relations Board to enforce an order to cease and desist—the initial and decisive question involved is whether under the proofs in the case the respondents are engaged in interstate commerce.

In that regard the Intermediate Report (Record page 461) states: "The business of respondents is clearly of an interstate nature." If this statement is correct, the order should be enforced. On the other hand, if the Board has not shown that "the business of the respondents is clearly of an interstate nature" this Court should decline to enforce the proposed order.

Addressing ourselves to that controverted question, the proofs show that Benjamin Fainblatt, a respondent, is the sole owner of a small garment manufacturing plant in the village of Somerville, New Jersey, employing at times sixty persons, according to the manufacturing orders he receives from a partnership in New York called Lee Sportswear Company, which was composed of his sons, and which was engaged in marketing women's sports garments. Their father had no interest in the partnership, and the sons had no interest in the plant or business of their father. The New York Lee Sportswear Company, hereafter called Lee Company, as their business required, owned all the tailoring material here involved. Such material from time to time was cut in New York by Lee Company and shipped in trucks employed by it to respondent's factory—hereafter called Somerville. At times, in order to avoid delay, Lee Company's material was shipped direct from mills to Somerville. All shipments were there cut, tailored, pressed by Somerville, and delivered to the trucks employed by Lee Company for delivery either to the New York partnership or its customers as directed by it. To that end Lee Company kept a representative in the factory. The material was owned by Lee Company and respondent had no control

ownership, or interest in the material sent by Lee Company or in the tailored article. He was paid for the tailoring work he did, no one but himself was interested in his factory and the profits arising therefrom were included in his personal income tax return. From the testimony produced by the Board, these facts are shown.

Bearing on the fact that respondent had no interest in the Lee Company, respondent's uncontroverted testimony was:

"Q. And you are not financially interested in that company?

A. No, sir.

Q. Is that a corporation?

A. No, sir.

Q. That, too, is just a business operating under a trade name?

A. A partnership.

Q. I see. You have no financial interest in it?

A. No, sir.

Q. Were you ever associated with that company?

A. No, sir."

As to Lee Company paying no bills for or at Somerville, the proof is:

"Q. Well, does the Lee Sportswear Company pay any of the bills of the Somerville Company?

A. No.

Q. Not at all?

A. No, no.

Q. Did it ever pay for the installation of any of your machinery?

A. No, sir.

Q. Or repairs to your machinery?

A. No."

That respondent's work was simply tailoring and cutting, the proof is:

"Q. But what you are actually engaged in here is the tailoring?

A. Tailoring and cutting.

Q. Which is the substantial operation in your plant?

A. Tailoring.

Q. You went into that business with your own capital?

A. Yes.

Q. You assumed all financial obligations and responsibilities in running this business in Somerville?

A. Yes.

Q. And that is solely a manufacturing business?

A. Yes."

That the profits from his plant are reported by respondent and that the Lee Company had no share therein is shown in the Record, page 113:

"Q. Do you file a personal income tax return?

A. Yes.

Q. Do you include in that personal income tax return your income from manufacturing here?

A. Yes.

Q. And does the Lee Sportswear, to your knowledge, include in their income tax return any income from the Somerville Manufacturing Company?

A. They haven't got no income from the Somerville Manufacturing Company."

Recognizing these proofs by the witness produced by itself, the Labor Board, in its Intermediate report, says:

"Mr. Fainblatt testified that he is the sole owner of the two companies, and that he has no financial interest in the Lee Sportswear Co."

Moreover, in its report, the Labor Board states: "All of the raw material converted into garments by respondents are owned by the Lee Sportswear Co." As to the operations generally, the Labor Board states:

"All of the raw material, converted into garments by respondents, are owned by the Lee Sportswear Co. Although the proportion varies from time to time, it is customary for the Lee Sportswear Co. to furnish the material already cut and ready for the operators to sew. If the Lee Sportswear Co. is very busy, material is sent to the respondents for cutting. Sometimes, however, the material is shipped directly from the mills to respondents in Somerville, where it is cut. Respondents receive extra compensation for the cutting, whether the uncut material comes from the mills or from Lee Sportswear Co. Some of the mills from which respondents receive these shipments are located outside the State of New Jersey. During recent months most of the material has been cut when received by respondents. After the garments are made up they are shipped back to the Lee Sportswear Co. in New York City, although some of them are turned over to a representative of that company stationed at the Somerville plant, who may ship them directly to customers. Most of the raw materials and finished garments are handled by an expressman or trucking concern, Sissler Brothers, of Somerville, N. J. Lee Sportswear Co. pays the trucking charges. In general no stock of raw materials is maintained at the Somerville plant, although there are times when there is more work on hand than at others.

The garments as finished by respondents do not carry any label. Sol Fainblatt, Benjamin Fainblatt's son, is employed by and acts as the Somerville agent of the Lee Sportswear Co. He goes to New York City each morning as a part of his work, gets his orders, returns to Somerville, N. J., about two o'clock in the afternoon, and ships his goods out. The goods that he ships are those turned over to him by respondents. The Lee Sportswear Co. pays in advance for the garments manufactured by respondents. This payment represents principally the labor involved in the cost of manufacture."

In the face of these proofs, given by its own witness and without any proof to the contrary, the Board (record page 470), made this contradictory and unwarranted findings:

"The respondents are doing business in Somerville, N. J., under the firm names, Somerville Manufacturing Company and Somerset Manufacturing Company, and are engaged in the manu-

of this business they have caused substantial amounts of raw material and finished goods to be purchased, transported, and sold in interstate commerce."

On the contrary, the proofs adduced by the Board show that the respondents have made no purchases of "raw material," have made no purchases of "finished product," have sold no goods or materials, and have transported nothing. That the Lee Company which is not here involved, in the purchase of its raw materials or in its sale of the tailored product, in its transportation to and fro across State lines, was engaged in interstate commerce, in no way affects the respondent, who owns no material, who is not engaged in commerce, who has no commerce to transport, who buys nothing and sells nothing, and who has no voice, power, interest, or control in or of what is done by Lee Company in bringing to or taking from his factory its own merchandise. That such an one and his local plant can be drawn into the network of national control under the constitutional power to "regulate the commerce between the States," this court cannot hold.

So regarding, the petition of the Board is denied.

Biggs, Circuit Judge (dissenting).

There is no dispute as to the essential circumstances of the case at bar though discrepancies occur in the testimony. The question presented is really one of law. The facts may be stated briefly, as follows.

In August 1934 Benjamin Fainblatt, acting in cooperation with his daughter, Marjorie, established a business in Somerville, New Jersey, under two names procured under the Business Names Act of New Jersey.¹ One name was "Somerville Manufacturing Company"; the other was "Somerset Manufacturing Company." The two names were used interchangeably. The individuals principally concerned in the business were the respondents, Benjamin Fainblatt and Marjorie Fainblatt. The name "Somerville Manufacturing Company" was not made use of by the respondents after February 15, 1935, and following that date all business was conducted under the name "Somerset Manufacturing Company."

The business had been financed by Lee Sportswear Company, a copartnership doing business in New York City and consisting of Leo and Irving Fainblatt, sons of Benjamin Fainblatt, and Marjorie Fainblatt. Benjamin Fainblatt had been employed by this partnership immediately prior to his going into business in Somerville. The business at Somerville consisted of finishing and tailoring women's sportswear. The materials which were finished or tailored were supplied by Lee Sportswear Company and shipped to the respondents' plant at Somerville. When finished and tailored by the respondents, the finished and tailored goods were delivered by the respondents upon the premises to Sol Fainblatt, another son of Benjamin Fainblatt, acting as the representative of Lee Sportswear. Sol Fainblatt directed the disposal of the finished merchandise. Part of it, by his direction, was delivered to Lee Sportswear in New York City; the remainder was sent direct from the Somerville plant to customers of Lee Sportswear in various States. Title to the goods remained in Lee Sportswear and was never vested in the respondents.

¹C. S. 3686, Sup. 2528. Sup. 1781 (1621), p. 104.

The respondents are engaged solely in finishing the material supplied to them by Lee Sportswear. Lee Sportswear supplied unfinished material solely to the respondents. All finished material sold by Lee Sportswear was finished by the respondents. The work performed by them for Lee Sportswear was performed under contracts. The payments made under these contracts were the only source of income to the respondents' business at Somerville. As a matter of fact the records of Lee Sportswear as to unfinished goods delivered to, and finished goods received from the respondents, constitute the only production records of the Somerville business.

Somerville Manufacturing Company, Somerset Manufacturing Company employed women garment workers to finish the raw materials furnished by Lee Sportswear. These garment workers constituted the tailoring department of the respondents' business. Beginning about August 14, 1935, at the request of certain employees, attempts were made to organize the employees of the tailoring department of Somerset Manufacturing Company by Local 149 of the International Ladies' Garment Workers' Union. The tailoring department consisted of operators, floor girls, and finishers, and was an appropriate bargaining unit. A labor dispute immediately ensued. On September 6, 1935, the respondents refused to bargain collectively with the representative of the Union and a strike was precipitated by this refusal.

Between August 14 and September 18, 1935, eight girls were discharged because of their union activity or membership. It would be difficult to find testimony indicating more plainly discrimination against employees for union activity. For example, one of the discharged employees when discharged was told by her foreman: "I am sorry. You are causing too much trouble. I have no more work for you." Another was told by the foreman: "I have not any more work for you. You are causing too much trouble. If you want work go to the Union. The Union will give you work." Another employee was refused admittance to the plant by Benjamin Fainblatt himself. Fainblatt saying, "I have no work for you * * * I don't owe you anything. If you want work you can go to the Union."

Setting out more fully the testimony in this regard which I have now recapitulated briefly, the Board found that the tailoring department of the Somerset Manufacturing Company constituted an appropriate bargaining unit, that Local No. 149 had been designated by a majority of the employees in the tailoring department as their representative for collective bargaining; that the strike resulted directly from the respondents' refusal to bargain collectively and that the respondent, Benjamin Fainblatt, was guilty of discriminatory discharges and other unfair labor practices prohibited by Section 8 of the Act (29 U. S. C. A. 158). These findings of the Board are fully supported by the evidence and may not be set aside by this court. *National Labor Relations Board v. Pennsylvania Greyhound Lines, Inc.*, 91 F. (2nd) 178; affirmed, 303 U. S. 261; *National Labor Relations Board v. Washington, Virginia and Maryland Coach Co.*, 85 F. (2nd) 990, affirmed 301 U. S. 142; *National Labor Relations Board v. Associated Press*, 85 F. (2nd) 56, affirmed, 301 U. S. 103; *Jeffrey DeWitt Insulator Co. v. National Labor Relations Board*, 91 F. (2nd) 134, certiorari denied, 302 U. S. 731.

The Board also made findings in respect to the status of the respondents in interstate commerce. These contain the gist of the controversy at issue and include findings to the effect that the cut cloth processed in the respondents' plant and the finished product thus created were transported in interstate commerce and constituted a continuous flow of commerce among the States, that the volume of this flow varied directly with the volume of the respondents' output and that the acts of the respondents "... have led and tend to lead to labor disputes burdening and obstructing commerce . . . between the several States . . ." There is also a specific finding by the Board as to the diminution of the number of finished garments shipped from the respondent's plant during the period of the strike.²

Upon June 3, 1936, the Board entered an order to the effect that Benjamin Fainblatt and Marjorie Fainblatt, doing business under the firm names and styles of Somerville Manufacturing Company and Somerset Manufacturing Company, should cease and desist from 1 (a), interfering with, restraining or coercing their employees in the exercise of the right to join and assist the International Ladies' Garment Workers' Union or any other labor organization, (b), from discouraging membership in the Union referred to, or any other labor organization, by discharging, refusing to reinstate or otherwise discriminating in regard to tenure or terms of employment in respect to employees who have joined or assisted the Union or any other labor organization, (c), from refusing to bargain collectively with the Union as the exclusive representative of the employees in the tailoring department of the Somerset Manufacturing Company; and 2 (a), should bargain collectively with the Union as the exclusive representative of the employees of the tailoring department in respect to rates of pay, wages, hours and other conditions of employment, (b), should offer to the eight discharged employees immediate and full reinstatement to their former positions without prejudice, (c), should offer employment to all employees of the tailoring department who went on strike, subject to certain specified conditions, (d), should make whole the eight discharged employees for any loss of pay, and (e), should post notices in conspicuous places in the plant to the effect that the respondents would cease and desist from the practices condemned by the National Labor Relations Act.

Upon June 19, 1937, the respondents not complying with the order, the Board filed a petition in this court to the end that the order might be enforced. The respondents having refused to take testimony at the time of the original hearings because they deemed the Act to be unconstitutional, then petitioned this court to the end that supplementary hearings should be held to give them an opportunity to introduce testimony upon their own behalf. This court ordered such

² Between September 1 and 17, 1934, approximately 1065 dozen finished garments were shipped from the respondent's plant. From November 18 to 30, 1934, approximately 967 dozen garments were shipped. Though the record is incomplete as to the shipments in October, 1934, it is clear that at least 1011 dozen were shipped. The shipments from September 1 to 17, 1935, totaled approximately 857 dozen. The strike in this case began September 18, 1935. The shipments from September 18 to 30, 1935, totaled approximately 373 dozen. In October, 1935, the record reveals that there were at least 680 dozen shipped, although there may have been more. Thus, while in September, 1935, before the strike, the plant's output was about 80 per cent of the figure for the same period in 1934; after the strike its output dropped to less than 38 per cent of that during the same period in 1934. Though the record is not clear, it seems probable that the former level of production was not regained during October.

hearings and after they were completed the Board filed a further decision and order. In this decision, the Board found that Benjamin Fainblatt was the real owner of the business and that Marjorie Fainblatt was merely a record owner. It also found that the number of permanent employees of the plant had increased between the time of the original and supplementary hearings from fifty-nine to approximately two hundred, and that it had before it no sufficient evidence as to the membership of the Union. In view of these circumstances the Board amended its original order by striking out that portion of it requiring the respondents to bargain collectively, viz. 1 (c) and 2 (a), supra. The supplemental order reiterated all other provisions of the original order. Such was the state of the record at the time of the hearing before us.

The majority opinion of the court poses and answers one question: Is the business of the respondents interstate in character? The answer is given in the negative. I think the question should be framed otherwise, as follows: Are the operations of the respondents a part of a continuous flow of commerce between the States and have the acts of the respondents complained of led and do they tend to lead to a labor dispute burdening and obstructing commerce and the free flow of goods in commerce between the States? I think that the answer to this question must be in the affirmative and for that reason I dissent respectfully from the majority view.

Material shipped through interstate commerce comes into the respondents' plant at Somerville, is there turned into a finished product and goes out again into the currents of interstate commerce. Can the work performed by the respondents' employees be isolated from the stream of commerce whence the unfinished material comes and into which the completed product goes? Can the stream of commerce be impounded temporarily so that for the time being, it loses its identity and force and ceases to exist as part of the current between the States?

If the flow of commerce may be so impounded, I see no reason why the interruption may not be created by the devices employed in the case at bar; namely, manufacture on contract, retention of title by him who supplies the raw material and sells the finished goods, and an arbitrary separation of the manufacturing unit from the supply unit and the marketing unit. If the authority of Congress over the flow of commerce between the States may be circumvented by the device of passing raw material through one door of a manufacturing plant and withdrawing the completed product through another, the express purpose of the National Labor Relations Act, the protection of commerce from the burden of labor disputes, is frustrated. I believe that such is not the law.

The work performed by the respondents and their employees had a direct causal relationship to the flow of interstate commerce. The labor practices of the respondents precipitated a strike which was the proximate cause of a diminution in interstate commerce. The flow of commerce was thereby obstructed and burdened. In my opinion, such is the test.

The decision of the Supreme Court in *National Labor Relations Board v. Friedman-Harry Marks Clothing Co.*, 301 U. S. 58, may

be distinguished from the case at bar only upon the ground that the Clothing Company was not a "contract" manufacturer, that it procured its own raw materials and itself sold its finished products in interstate commerce. For the reasons heretofore given such a distinction seems to me to have little weight. The Clothing Company Case in reality turns upon the existence of obstruction to commerce or the free flow of commerce, a burden affecting commerce, as in the case at bar. As was stated by the Chief Justice in the case of National Labor Relations Board v. Jones and Laughlin Steel Corporation, 301 U. S. 1, 31, 32, "It is a familiar principle that acts which directly burden or obstruct interstate or foreign commerce, or its free flow, are within the reach of the congressional power. . . . It is the effect upon commerce, not the source of the injury, which is the criterion."

Nor do I think the case at bar can turn upon the comparatively small size of the respondents' business. The mere size of the operation by which goods are put into interstate commerce does not supply the test. National Labor Relations Board v. Bell Oil and Gas Co., 91 F. (2nd) 509; Renown Stove Co. v. National Labor Relations Board, 90 F. (2nd) 1017.

In my opinion the order of the Board should be enforced.

A true Copy:

Teste:

*Clerk of the United States Circuit Court of
Appeals for the Third Circuit.*

In the United States Circuit Court of Appeals for the Third Circuit

No. 6490. March Term, 1938

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

BENJAMIN FAINBLATT, ET AL., ETC., RESPONDENTS

Appeal from the National Labor Relations Board

This cause came on to be heard on the transcript of record from the National Labor Relations Board, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged, and decreed by this Court that the petition to enforce the order of the National Labor Relations Board in this cause be, and the same is hereby denied.

Philadelphia, July 28, 1938.

Per Curiam.

BUFFINGTON, *Circuit Judge.*

Order Denying Petition to Enforce Order of National Labor Relations Board. Received & Filed July 28, 1938. Wm. P. Rowland, Clerk.

In the United States Circuit Court of Appeals for the Third Circuit

No. 6490. October Term, 1937

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

BENJAMIN FAINBLATT, ET AL., ETC., RESPONDENTS

Sur petition for rehearing

And now, to wit, September 8, 1938, after due consideration, the petition for rehearing in the above-entitled case is hereby denied.

Philadelphia, Sept. 8, 1938.

Per Curiam.

BUFFINGTON, *Circuit Judge.*

[Endorsements:] Order Denying Petition for Rehearing: Received & Filed Sept. 8, 1938. Wm. P. Rowland, Clerk.

UNITED STATES OF AMERICA,

Eastern District of Pennsylvania,

Third Judicial Circuit, Sct.:

I, Wm. P. Rowland, Clerk of the United States Circuit Court of Appeals for the Third Circuit, DO HEREBY CERTIFY the foregoing to be a true and faithful copy of the original Transcript of Record, Volume I, in the case of National Labor Relations Board, Petitioner, vs. Benjamin Fainblatt, et al., individuals, doing business under the firm names and styles of Somerville Manufacturing Company and Somerset Manufacturing Company, Respondents. No. 6490 on file, and now remaining among the records of the said Court, in my office.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said Court, at Philadelphia, this 21st day of November, in the year of our Lord one thousand nine hundred and thirty-eight, and of the Independence of the United States the one hundred and sixty-third.

[SEAL]

WM. P. ROWLAND,

Clerk of the U. S. Circuit Court of Appeals,

Third Circuit.

Supreme Court of the United States A

Order allowing certiorari

Filed January 9, 1939

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Third Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.